Barclays Official

CALIFORNIA CODE OF REGULATIONS

Title 7. Harbors and Navigation

Complete Title

Vol. 7

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BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS

REVISED EDITION

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TITLE 7. HARBORS AND NAVIGATION

NOMENCLATURE CROSS–REFERENCE

(NOTE: Effective April 1, 1990, the Office of Administrative Law authorized the renaming of the hierarchical headings used within the Titles of the *California Code of Regulations*. Until the agencies implement these changes in their regulations, use the following Cross–Reference Table for the new organizational headings used in this Title.)

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Division 1. San Francisco Port Authority

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Division 1. San Francisco Port Authority Harbor Traffic Code

HISTORY

1. Regulations were originally printed April 30, 1946

2. Repeal of Chapter 1 (Sections 1 through 134, not consecutive) by operation of Chapter 1333, 1968 Statutes. For prior history, see Register 4; Register 13, No. 6; 15, No. 5; 26, No. 1; 28, No. 6; 54, Nos. 10 and 23; 59, No. 5; 60, Nos. 7 and 15; 64, No. 8 and 68, No. 10.

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Title 7. Harbors and Navigation

Division 2. State Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun

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Division 2. State Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun

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Division 2. State Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun

Article 1. Definitions

§ 201. Statutory Definitions.

(a) "Code" means Chapters 1 through 6 of Division 5 (commencing with Section 1100) of the Harbors and Navigation Code, as amended from time to time.

(b) "Board" means Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun.

NOTE: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Sections 1111 and 1154, Harbors and Navigation Code.

HISTORY

1. Repealer and new section filed 5–9–88; operative 6–8–88 (Register 88, No. 20). For prior history, see Registers 76, No. 32; 58, No. 2 and 28, No. 1.
2. Amendment of subsection (b) filed 6–3–2003; operative 7–3–2003 (Register 2003, No. 23).

§ 202. Other Definitions.

(a) "Administrative Assistant/Secretary" means the individual appointed by the Board pursuant to Section 212.

(b) "Bays of San Francisco, San Pablo and Suisun" means all the waters of those bays and of the tributaries, ports and harbors of those bays, and includes the water areas from the south end of San Francisco Bay and from the Ports of Sacramento and Stockton to the Golden Gate Bridge.

(c) "Certificate of completion" means the certificate given by the Board to a pilot trainee notifying the trainee that he or she has successfully completed the training program.

(d) "Chemical test" means a scientifically recognized test which analyzes an individual's breath, blood, urine, saliva, bodily fluids, or tissues for evidence of dangerous drug or alcohol use.

(e) "Conflict of interest code" means those provisions in Section 222 which define conflicts of interest for licensees of the Board.

(f) "Conflict of interest code of the Board" means those provisions in Section 212.5 which define conflicts of interest for designated employees of the Board.

(g) "Dangerous drug" means a narcotic drug, a controlled substance, marihuana, or a controlled–substance analogue (as defined in section 102 of the federal Comprehensive Drug Abuse and Control Act of 1970 (Title 21, United States Code, Section 802)).

(h) "Executive Director" means the individual appointed by the Board pursuant to Section 211.

(i) "Fails a chemical test for dangerous drugs" means that the result of a chemical test conducted in accordance with Title 49, Code of Federal Regulations, Part 40 is reported as "positive" for the presence of dangerous drugs or drug metabolites in an individual's system by a Medical Review Officer in accordance with that part.

(j) "Inland pilot" means an individual licensed as an inland pilot by the Board.

(k) "Investigator" means a person employed by or under contract with the Board and assigned to investigate a navigational incident involving a vessel piloted by a pilot or inland pilot licensed by the Board, or any other matter for which a pilot's or inland pilot's license may be revoked or suspended pursuant to these regulations, including a possible conflict of interest as set forth in Section 222, or to investigate reports of suspected pilot ladder or pilot hoist safety violations.

(*l*) "Medical Review Officer" means an individual designated to carry out the duties specified in Title 46 Code of Federal Regulations Section 16.370 on behalf of the pilots, inland pilots or pilot trainees.

(m) "Monterey Bay" means all the waters of that bay and of the tributaries, ports and harbors of that bay.

(n) "Pilot" means an individual licensed as a pilot by the Board other than as an inland pilot.

(o) "Pilot Evaluation Committee" means the committee appointed by the Board pursuant to Section 209.

(p) "Pilot trainee" or "trainee" means a person who is training as a pilot in the pilot trainee training program established by the Board.

(q) "Pilotage grounds" means all waters extending eastward from the precautionary area surrounding buoy SF to, and including, the Bays of San Francisco, San Pablo and Suisun, and also includes the waters of Monterey Bay, eastward of a straight line drawn between Point Santa Cruz Light and Point Pinos Light.

(r) "Port Agent" means the individual identified in Section 218.

(s) "Serious Marine Incident" means an event or events that meet the definition of "Serious Marine Incident" under Title 46, Code of Federal Regulations, Section 4.03–2.

(t) "Training program" or "program" means the standards and procedures for training pilots, inland pilots and pilot trainees adopted by the Board as contained in Sections 214 and 215.

NOTE: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Sections 1101(e), 1101(h), 1110, 1113, 1114, 1114.5, 1154, 1156, 1156.5, 1156.6, 1170.3, 1171.5, 1180, 1180.3 and 1181, Harbors and Navigation Code; Title 21, U.S. Code, Section 802; Title 46, Code of Federal Regulations, Sections 4.03–2, 97.90–1 and 108.719, subparts 163.002 and 163.003, and Part 16; and Title 49, Code of Federal Regulations, Part 40.

HISTORY

1. Repealer and new section filed 5–9–88; operative 6–8–88 (Register 88, No. 20). For prior history, see Register 83, No. 1.
2. Amendment filed 8–12–93; operative 9–13–93 (Register 93, No. 33).
3. New subsection (*l*), subsection redesignation, and amendment of NOTE filed 6–16–94; operative 7–18–94 (Register 94, No. 24).
4. New subsections (d), (f), (h) and (k), subsection relettering, and amendment of NOTE filed 4–20–98; operative 5–20–98 (Register 98, No. 17).
5. Amendment of subsection (j) and amendment of NOTE filed 8–10–99; operative 9–9–99 (Register 99, No. 33).
6. Amendment of section and NOTE filed 6–3–2003; operative 7–3–2003 (Register 2003, No. 23).

Article 2. Meetings, Quorums, Actions

§ 203. Meetings.

(a) The Board shall meet on a regular basis at least once each month on the date and at a time and place specified by the President.

(b) Notice of the date, time and place of a meeting of the Board shall be given at least ten days in advance of the meeting to the Port Agent and to any person who has requested, in writing, to be notified of Board meetings.

(c) The President may call special meetings of the Board. The notice requirements for a special meeting are the same as those for a regular meeting as set forth in subsection (b) of this section.

(d) The President may call and notice emergency meetings of the Board as authorized by law.

(e) All meetings shall be conducted in accordance with the requirements of Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code.

NOTE: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Section 1153, Harbors and Navigation Code.

HISTORY

1. Repealer and new section filed 5–9–88; operative 6–8–88 (Register 88, No. 20). For prior history, see Register 83, No. 1.
2. New subsection (d) filed 8–12–93; operative 9–13–93 (Register 93, No. 33).
3. Amendment of subsections (b) and (e) filed 6–3–2003; operative 7–3–2003 (Register 2003, No. 23).

§ 204. Quorum.

A "quorum" of the Board shall consist of four members. The Board shall not transact any business until a quorum is present and announced. In the absence of the President and Vice President, the quorum shall select a presiding officer for the meeting from among those members present.

NOTE: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Section 1150(d), Harbors and Navigation Code.

HISTORY

1. Repealer and new section filed 5–9–88; operative 6–8–88 (Register 88, No. 20). For prior history, see Register 83, No. 1.
2. Amendment filed 8–12–93; operative 9–13–93 (Register 93, No. 33).
3. Amendment filed 6–3–2003; operative 7–3–2003 (Register 2003, No. 23).

§ 205. Action by the Board.

All actions of the Board shall require the affirmative vote of at least four members, a quorum being present.

NOTE: Authority cited: Section 1154, Harbors and Navigation Code. Reference Section 1150(d), Harbors and Navigation Code.

HISTORY

1. Repealer and new section filed 5–9–88; operative 6–8–88 (Register 88, No. 20). For prior history, see Register 83, No. 1.

Article 3. Officers, Committees, Employees

§ 206. President.

(a) The Board shall elect a President from among its members, who shall serve for a term of one year. A member shall not serve as President for more than two consecutive terms.

(b) The President shall preside at regular and special meetings of the Board and direct the administrative operations of the Board.

NOTE: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Section 1153, Harbors and Navigation Code.

HISTORY

1. New section filed 5–9–88; operative 6–8–88 (Register 88, No. 20).
2. Amendment of article heading filed 8–12–93; operative 9–13–93 (Register 93, No. 33).

§ 207. Other Officers.

(a) The Board shall elect a Vice President from among its members, who shall have all the powers of the President in the absence of the President or when the President does not participate in Board proceedings because of a conflict of interest or for any other reason. The Vice President shall serve for a term of one year. A member shall not serve as Vice President for more than two consecutive terms.

(b) The Board may elect such other officers as it considers necessary to carry out the functions of the Board.

NOTE: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Section 1153, Harbors and Navigation Code.

HISTORY

1. New section filed 5–9–88; operative 6–8–88 (Register 88, No. 20).

§ 208. Board Advisory Committees.

(a) The President, or in his or her absence, the Vice President or other presiding officer, may appoint advisory committees of the Board when he or she or the Board considers the appointment of advisory committees desirable or necessary to assist the Board in the performance of its functions. The presiding officer shall designate the chair and the members for each advisory committee appointed.

(b) The purpose of an advisory committee is to undertake the duties or tasks assigned to it and to advise and make recommendations to the Board concerning those matters.

(c) An advisory committee shall not transact any business until a quorum of the advisory committee is present and announced. A quorum for the purpose of this section consists of a majority of the members of the advisory committee.

NOTE: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Section 1153, Harbors and Navigation Code.

HISTORY

1. New section filed 5–9–88; operative 6–8–88 (Register 88, No. 20).
2. Amendment of subsection (a) filed 6–3–2003; operative 7–3–2003 (Register 2003, No. 23).

§ 209. Pilot Evaluation Committee.

(a) The Board shall establish a Pilot Evaluation Committee consisting of five active pilots each of whom have at least ten years' experience as a pilot on the Bays of San Francisco, San Pablo and Suisun. The Board shall select the members of the Pilot Evaluation Committee. A member of the Pilot Evaluation Committee shall not serve more than two four–year terms.

(b) The Pilot Evaluation Committee shall meet on such dates and at such times and places as it considers necessary to carry out its functions. The committee, through its chair, shall report on the committee's activities at each regular meeting of the Board.

(c) The Pilot Evaluation Committee shall conduct and supervise the pilot trainee training program of the Board in accordance with the directions and regulations of the Board and the Code.

(d) The Pilot Evaluation Committee shall at least quarterly review and evaluate each pilot trainee's progress in the training program and shall prepare and maintain a written report of that evaluation. The committee may examine a pilot trainee orally, in writing, or both at the times and in the manner prescribed by the committee.

(e) If a pilot trainee is placed on probation as a result of inadequate performance, the Pilot Evaluation Committee shall review and document the trainee's progress monthly during the probation period and shall inform the trainee of the results in writing. Evaluation during probation shall be designed by the Pilot Evaluation Committee to determine whether the trainee's level of performance is sufficient to warrant the conclusion that:

(1) the trainee is making adequate progress to meet the conditions of probation, and

(2) if the trainee's performance continues to improve, he or she is likely to complete the training program successfully.

NOTE: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Section 1171.5(c), (d) and (e), Harbors and Navigation Code.

HISTORY

1. New section filed 5–9–88; operative 6–8–88 (Register 88, No. 20).
2. Amendment of subsections (a) and (c) filed 8–12–93; operative 9–13–93 (Register 93, No. 33).
3. New subsections (d)–(e)(2) filed 1–14–97; operative 2–13–97 (Register 97, No. 3).
4. Amendment of subsections (a) and (b) filed 6–3–2003; operative 7–3–2003 (Register 2003, No. 23).

§ 210. Incident Review Committee.

(a) The President shall appoint an Incident Review Committee with the responsibility of investigating and reporting to the Board all reports of misconduct or navigational incidents involving a vessel piloted by a pilot or inland pilot licensed by the Board, or any other matter for which a pilot's or inland pilot's license may be revoked or suspended pursuant to these regulations, including a possible conflict of interest as set forth in Section 222, and reports of suspected pilot ladder or pilot hoist safety violations. The Incident Review Committee shall be composed of one public member of the Board and the Executive Director. This subsection does not apply to an incident involving a pilot or inland pilot aboard a vessel of less than 300 gross tons unless a pilot or inland pilot is required by law.

(b) The Incident Review Committee may exercise its discretion if there is clearly no pilot error involved and declare the reported incident to be a non–incident. If there is an appearance of pilot error, the Incident Review Committee shall investigate the incident, misconduct or other matter and prepare a written report. The Incident Review Committee may use investigators, call witnesses and obtain additional information as it considers necessary to complete its investigation. In performing their duties, the members of the Incident Review Committee and the investigators shall act fairly and impartially and shall treat all matters developed or obtained as required by law. The members of the Incident Review Committee and the investigators shall not discuss any investigation with the Board or any member of the Board who is not on the committee until the matter has been finally disposed of by the Incident Review Committee or final action has been taken by the Board, as appropriate.

(c) The written report developed by the Incident Review Committee relating to the incident, misconduct or other matter shall include but need not be limited to:

(1) The name of the vessel, time, date and location of the incident and identification of the pilot or inland pilot.

(2) A description of the weather and sea conditions.

(3) An illustration and description of the incident, misconduct or other matter under investigation.

(4) An estimate of damages, if any.

(5) The names of witnesses providing information relating to the incident, misconduct or other matter under investigation.

(6) The nature and extent of any injuries.

(7) A summary of the investigations of any prior incidents, misconduct or other matters involving the pilot or inland pilot, or, if investigating reports of suspected pilot ladder or pilot hoist safety violations, a summary of the investigations of any prior such violation reports involving the same vessel, vessel owner or operator.

(8) Any relevant correspondence or records from the U.S. Coast Guard relating to the incident, misconduct or other matter under investigation.

(9) A historical record of the actions taken in the investigation and any action taken in response to the investigation.

(10) A summary of the factual background of the incident, misconduct or other matter under investigation.

(11) The following information shall be included in the report but shall not be part of the public record:

(A) The report from the pilot or inland pilot.

(B) The confidential report of the investigator.

(d) At the conclusion of an investigation and depending upon the results thereof, the Incident Review Committee may take any of the following actions:

(1) Prefer an accusation for suspension or revocation of the pilot's or inland pilot's license.

(2) Enter into a written stipulation with the pilot or inland pilot terminating the matter on such terms and conditions as they consider acceptable, including compliance with any recommended remedial training or study and participation in the training of pilots and pilot trainees. Any such stipulation shall be approved in writing by the Incident Review Committee members, acting for the Board and the Board's counsel and by the pilot or inland pilot and his or her counsel, if any. A stipulation may provide that it may be referred to following a finding of fault in any subsequent accusation brought against the same pilot or inland pilot for the purpose of considering an appropriate sanction. A written stipulation may not, however, be used for any purpose more than five years after the date of its execution.

(3) Provide counseling for the pilot or inland pilot relating to his or her duties and obligations.

(4) Issue a warning letter of reprimand to the pilot or inland pilot.

(5) Take any other action, as provided in the guidelines in this section.

(6) Close the matter without further action.

(e) If corrective action is required as a result of the investigation, the Incident Review Committee shall consider the following factors in determining the appropriate corrective action to be imposed and in going outside of the guidelines in this section:

(1) The severity of the misconduct.

(2) The danger to the public.

(3) The number and frequency of prior incidents involving pilot error.

(4) The nature and extent of any injuries, property damage or harm to the environment resulting from the incident.

(5) The length of time the pilot or inland pilot has been licensed.

(6) Prior corrective action imposed upon the pilot or inland pilot.

(7) The degree to which the proposed action is likely to prevent recurrence.

(8) The effect of the proposed action upon the pilot's or inland pilot's livelihood.

(9) Corrective action already taken by the pilot or inland pilot relative to the incident under consideration.

(10) The degree of negligence of the pilot or inland pilot.

(11) Any other mitigating or aggravating circumstances deemed pertinent by the Incident Review Committee.

(f) In determining the appropriate action to be taken for certain specific types of misconduct, the following guidelines shall apply:

(1) Under the influence of illegal drugs while on duty: Filing an accusation recommending revocation of license.

(2) Under the influence of alcohol while on duty:

First offense—filing an accusation recommending suspension of license (6–12 months) and mandatory participation in a rehabilitation program approved by the Substance Abuse and Mental Health Services Administration.

Second offense—filing an accusation recommending revocation of license.

(3) Refusal to provide specimens required for timely drug and alcohol testing upon being directed by the Port Agent pursuant to the requirements of Section 218:

Filing an accusation recommending suspension of license (6–12 months).

(4) Failure to comply with federal, state or local navigation laws or regulations:

From a minimum of reprimand to a maximum of filing an accusation recommending suspension of license (1–3 months).

(5) Negligently performing duties related to vessel navigation:

From a minimum of reprimand to a maximum of filing an accusation recommending suspension of license (2–6 months).

(6) Neglect of vessel navigation duties:

From a minimum of reprimand to a maximum of filing an accusation recommending suspension of license (3–6 months).

(7) Failure to file a written report on a maritime incident in a timely fashion:

From a minimum of reprimand to a maximum of filing an accusation recommending suspension of license (2–4 months).

These guidelines are intended to guide the Incident Review Committee in determining the appropriate action to be taken and to promote uniformity in assessing the severity of specific types of misconduct, although it is recognized that the circumstances of any individual case may warrant action that falls outside the ranges provided above.

(g) Following a decision by the Incident Review Committee on the proper disposition of a matter, it shall report on the disposition of the matter to the Board at the Board's next regular meeting. Unless an accusation for suspension or revocation of the pilot's or inland pilot's license is preferred, the Incident Review Committee shall present the completed investigation to the Board. Unless an extension is granted by the Board, the report shall be presented within 90 days of the date of the incident, misconduct or other matter being investigated. The Board shall accept the report or return the matter to the Incident Review Committee for such further action as may be authorized by law.

(h) The record of the investigation and final disposition of the incident, misconduct or other matter shall be retained in the Board's records for 10 years, or as long as the pilot is licensed by the Board, whichever is longer, after the completion of the investigation and, except for the items listed in paragraph 11 of subsection (c), shall be a public record. Records of prior incidents more than 10 years old shall not be used in aggravation in determining corrective action unless the pilot or inland pilot raises such incident for mitigation.

(i) Action shall be taken by the Incident Review Committee pursuant to subsection (d) only if both members of the Incident Review Committee agree on the course of action. If agreement cannot be reached between the members, the Board president shall appoint one additional public member of the Board to serve on the Incident Review Committee until there is a final disposition of the case. Action will then be taken by majority vote of the Incident Review Committee.

(j) The Board may order the reconsideration of all or part of a determination made pursuant to this section on its own motion or on petition of any party. The power to order a reconsideration shall expire 30 days after the Incident Review Committee's report on the disposition of the matter as provided in subsection (g) of this Section, or on the date set by the Board as the effective date of the determination if that date occurs prior to the expiration of the 30–day period or at the termination of a stay not to exceed 30 days which the Board may grant for the purpose of filing an

application for reconsideration. If additional time is needed to evaluate a petition for reconsideration filed prior to the expiration of any of the applicable periods, the Board may grant a stay of that expiration for no more than 10 days, solely for the purpose of considering the petition. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition shall be deemed denied.

(k) No member of the Board shall sit on the Board as a trier of fact for those cases where he or she has served on the Incident Review Committee recommending action to the Board.

(l) The Executive Director shall maintain a suspense file to ensure all training, practice trips, or other corrective action required to be performed by a stipulated resolution to an incident, misconduct or other matter are completed as required. The Executive Director shall report to the Board each month on the progress of any ongoing training, practice trips or other corrective action.

(m) The Board shall formally review the performance of the Executive Director with respect to the performance of his or her duties as a member of the Incident Review Committee at least once each year.

NOTE: Authority cited: Sections 1154 and 1180.6(e), Harbors and Navigation Code. Reference: Sections 1154, 1156.5, 1156.6, 1180.3, 1180.6, 1181 and 1184, Harbors and Navigation Code.

HISTORY

1. Repealer and new section filed 5–9–88; operative 6–8–88 (Register 88, No. 20). For prior history, see Register 83, No. 1.
2. Amendment of section and NOTE filed 8–12–93; operative 9–13–93 (Register 93, No. 33).
3. Amendment of section heading, section and NOTE filed 1–26–96; operative 2–25–96 (Register 96, No. 4).
4. Amendment of subsections (a) and (c)(7) and amendment of NOTE filed 8–10–99; operative 9–9–99 (Register 99, No. 33).
5. Amendment filed 6–3–2003; operative 7–3–2003 (Register 2003, No. 23).

§ 211. Executive Director.

(a) The Board may appoint and reappoint an Executive Director in the manner provided by the Code. The Executive Director shall serve at the pleasure of the Board and shall be under the direct supervision of the President of the Board.

(b) The Executive Director shall not, during the term of his or her office, serve as a member of the Board, nor as a pilot or inland pilot, nor be otherwise concurrently employed in the maritime industry.

(c) The Board shall fix the compensation of and, from time to time, adjust the compensation of the Executive Director.

(d) The Executive Director shall not have any interest in any pilot vessel or tug, or in the earnings thereof, except for the compensation provided by this Section.

(e) The Executive Director shall have the following functions:

(1) To administer the personnel employed by the Board in accordance with the civil service laws;

(2) To serve as treasurer of the Board and keep, maintain and provide the Board with all statements of accounts, records of receipts and disbursements of the Board in accordance with law;

(3) To issue and countersign licenses, which shall also be signed by the President of the Board;

(4) To administer matters and maintain files pertaining to actions taken against licenses issued by the Board;

(5) To act as a member of the Incident Review Committee, as set forth in Section 210;

(6) With input from the pilots, inland pilots and industry, to formulate and recommend to the Board a curriculum for the training of pilots and inland pilots;

(7) Under the direction of the Board, to coordinate Board activities with other state and federal agencies charged with protecting the environment and with the oil and hazardous chemical shipping industry;

(8) To perform research and obtain documents and other evidence for Board activities, including rate hearings, as required by the President of the Board;

(9) To initiate and conduct the periodic review of the San Francisco Pilot Pension Plan established by Chapter 3 (beginning with § 1160) of the Code, and to prepare proposed recommendations for the Board's consideration; and

(10) Any other function, task, or duty as may reasonably be assigned by the President of the Board.

NOTE: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Sections 1156.5(a) through (h), 1156.6, 1158 and 1158.1, Harbors and Navigation Code.

HISTORY

1. Repealer and new section filed 5–9–88; operative 6–8–88 (Register 88, No. 20). For prior history, see Register 83, No. 1.
2. Renumbering of former section 211 to section 213 and new section filed 8–12–93; operative 9–13–93 (Register 93, No. 33).
3. Amendment of subsection (e)5. and amendment of NOTE filed 8–10–99; operative 9–9–99 (Register 99, No. 33).
4. Amendment filed 6–3–2003; operative 7–3–2003 (Register 2003, No. 23).

§ 212. Administrative Assistant/Secretary.

(a) The Board may appoint an Administrative Assistant/Secretary, who shall serve under the direct supervision of the Executive Director, or if there is no Executive Director, under the direct supervision of the President of the Board.

(b) The Board shall fix the compensation of, and from time to time adjust the compensation of, the Administrative Assistant/Secretary. The Administrative Assistant/Secretary shall not have any interest in any pilot vessel or tug, or the earnings thereof, except for the compensation provided in this Section.

(c) The Administrative Assistant/Secretary shall keep a written record of all the Board's proceedings and acts, and shall keep a register of all pilots and inland pilots, their residence and the date of each license. The Administrative Assistant/Secretary shall receive and maintain a record of the information required by Sections 219(m) and 220(i) of these regulations. In addition, he or she shall perform such additional clerical, administrative, and other duties as may reasonably be required by the Executive Director, or if there is no Executive Director, by the President of the Board.

NOTE: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Sections 1156, 1157 and 1158, Harbors and Navigation Code.

HISTORY

1. Repealer and new section filed 5–9–88; operative 6–8–88 (Register 88, No. 20). For prior Article 5. Licensing history, see Registers 82, No. 2; 78, No. 49 and 76, No. 32.
2. Renumbering of former section 212 to section 214 and new section filed 8–12–93; operative 9–13–93 (Register 93, No. 33).

§ 212.5. Conflict of Interest Code.

(a) This regulation shall constitute the conflict of interest code of the Board.

(b) The terms of Title 2, California Code of Regulations, Section 18730 and any amendments thereto duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. Pursuant to those terms, the designated employees specified in subsection (d) of this section shall file statements of economic interests with the Board, which will make the statements available for public inspection and reproduction in accordance with Section 81008, Chapter 1 of Title 9 of the Government Code.

(c) Upon receipt of the statements of economic interests of the members of the Board and the Executive Director, the Board shall make and retain copies and forward the originals of these statements to the Fair Political Practices Commission. The original statements of all other designated employees, will be retained by the Board.

(d) The "Designated Employees" referred to in the regulation referenced in subsection (b) of this section are the following:

(1) All Board members, to whom Disclosure Categories (1)–(12) of subsection (e) apply

(2) Executive Director, to whom Disclosure Categories (1)–(13) of subsection (e) apply

(3) Consultants/Board Counsel:*

*Consultants/Board counsel shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation:

The Executive Director may determine in writing that a particular consultant (including Board counsel), although a "designated position", is hired to perform a range of duties that is limited in scope and thus is not required to comply fully with the disclosure requirements described in this section. Such determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Executive Director's determination is a public record and shall be retained for public inspection in the same manner and location as the conflict of interest code.

(e) The "Disclosure Categories" referred to in the regulation referenced in subsections (b) and (d) of this section are the following:

(1) Investments and business positions in and income from boat yards and marine repair facilities;

(2) Investments and business positions in and income from providers of marine surveyor services;

(3) Investments and business positions in and income from providers of pilot training, and in pilot training facilities (including CMA, MSIS, Port Revel, etc.);

(4) Investments and business positions in and income from providers of crewing services for pilot boats;

(5) Investments and business positions in and income from providers of physical examinations for pilots;

(6) Investments and business positions in and income from providers of maritime investigation services;

(7) Investments and business positions in and income from pilot boats;

(8) Investments and business positions in and income from ownership, operation or management of tugboats operated on the Bays of San Francisco, San Pablo and Suisun;

(9) Investments and business positions in and income from commercial vessels which use pilotage services in the Bays of San Francisco, San Pablo and Suisun;

(10) Investments and business positions in and income from providers of public accounting services of the type used by S.F. Bar Pilot Association or SFBP Benevolent and Protective Association;

(11) Investments and business positions in and income from providers of insurance or insurance brokerage services of the type used by S.F. Bar Pilots Association and SFBP Benevolent and Protective Association;

(12) Income received from S.F. Bar Pilot Association or SFBP Benevolent and Protective Association;

(13) Investments and business positions in and income from suppliers of office equipment of the type used by Board staff.

NOTE: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Section 87300 et seq., Government Code.

HISTORY

1. New section filed 11-27-2001; operative 12-27-2001. Approved by Fair Political Practices Commission 9-24-2001 (Register 2001, No. 48).

Article 4. Training Programs

§ 213. Pilot Trainees.

(a) This section applies only to persons not previously licensed by the Board or otherwise exempt from such program by the Code.

(b) It is Board policy, through an effective selection process, to provide opportunity for progressive development and advancement of qualified maritime personnel to State licensed pilots in accordance with statutory requirements.

(c) State licensed pilots hold key positions in the safe passage of shipborne commerce in the waters under the Board's jurisdiction. They must exemplify the highest standards of leadership, professionalism and personal integrity. Mariners selected for the training program must demonstrate that they are fully capable of meeting demands of accountability and responsibility associated with such positions. The vital role of appropriately trained pilots in safety of navigation upon these waters cannot be overemphasized.

(d) The Board in selecting applicants to participate in the Pilot Trainee Training Program adheres to equal opportunity precepts. All applicants meeting minimum eligibility requirements as provided herein shall receive consideration without regard to age, sex, race, religion, national origin, lawful political affiliation, physical handicap (within the SHIPS limitations), marital status, membership or non-membership in any employee organization, or any other personal condition unrelated to the applicant's basic ability to perform satisfactorily as a pilot trainee and as a pilot.

(e) To meet minimum eligibility requirements, each applicant must:

(1) Possess a current, valid federal license as master of vessels of not less than 1600 gross tons with an unlimited radar endorsement;

(2) Be of good mental and physical health and of good moral character;

(3) Provide verified documentation demonstrating two years of performance as master:

(A) in command of a self-propelled vessel in navigation of not less than 1600 gross tons; or

(B) in command of a towing vessel engaged in ship assist, or in bay or ocean towing in which the combined gross tonnage of the towing vessel and vessel(s) towed is not less than 1600 gross tons.

(4) Demonstrate recency of experience as follows:

(A) The two years of command experience required by this section must have been within the five years immediately preceding the application cut-off date.

(B) In addition, one year of the required command experience must have been within the three years immediately preceding the application cut-off date.

(C) The recency requirements of subparagraphs (A) and (B) above may be met by equivalent periods of service as a commercial pilot, not a member of the crew, directing and controlling the movement of vessels of not less than 1600 gross tons, or a combination of such command and piloting (non-concurrent) experience.

(D) The recency requirement of subparagraph (B) above may be waived if the applicant can provide verified documentation that he or she has been employed in the maritime industry in a position closely associated with the operation and navigation of vessels during at least two of the last three years immediately preceding the application cut-off date.

(5) Be able to communicate in concise and clear language using proper terminology for bridge team, bridge-to-bridge and bridge-to-shore communications in English;

(6) Must not have had prior felony or drug convictions or be currently in violation of a court order to provide child or spousal support.

(f) The applications of all applicants meeting the minimum requirements in subsection (e) will be reviewed to assess experience points on the following schedule:

(1) Tug Experience (not to exceed a maximum of 30 points):

(A) Any command experience on tugs (minimum one year) 10 pts

(B) Offshore command experience not less than 1600 gross tons combined tug and tow (minimum one year, not included with any other experience) 5 pts

(C) 2 to 5 years command 5 pts

(D) Over 5 years command 5 pts

(E) Served as pilot on own vessels of not less than 1600 gross tons combined tug and tow (minimum 100 moves) in pilotage waters. "Own vessels" means vessels for which applicant was also the master or second in command. 5 pts

(2) Deep Draft Experience (not to exceed a maximum of 30 points):

(A) Any command experience on self-propelled vessels in navigation of not less than 1600 gross tons (minimum one year) 10 pts

(B) In command of self-propelled vessels over 10,000 gross tons (minimum one year, not included with any other experience) 5 pts

(C) 2 to 5 years command (minimum 1600 gross tons) 5 pts

(D) Over 5 years command (minimum 1600 gross tons) 5 pts

(E) Served as pilot on own vessels (minimum 100 moves) in pilotage waters. "Own vessels" means vessels for which applicant was also the master or second in command. 5 pts

(3) Piloting Experience (not to exceed a maximum of 40 points):

(A) Served as commercial pilot, not member of the crew, directing and controlling the movement of vessels of not less than 1600 gross tons (minimum one year) in waters in which a pilot is required by state, federal or foreign law 15 pts

(B) 2 to 5 years as full time pilot 15 pts

(C) over 5 years as full time pilot 10 pts

(g) For purposes of meeting the minimum eligibility requirements of subsection (e) herein and the assessment of experience points in subsection (f) herein, a "year" means a minimum of 360 days performing the duties of master or pilot.

(h) All applicants meeting the minimum requirements in subsection (e) above, and having received at least 15 experience points from subsection (f) above, will be permitted to take a written examination developed and administered by the Board in conjunction with the Office of Examination Resources (OER) of the Department of Consumer Affairs or contractors with equivalent psychometric qualifications and reviewed by OER, who shall establish a passing score for that examination. An applicant must achieve a passing score on the written examination in order to be eligible to proceed further in the selection process.

(i) Applicants must be selected for and pass a bridge simulator exercise which tests skills required for ship navigation in piloting waters that cannot be adequately tested in a written examination alone. These include the applicant's ability to assimilate and assess a variety of information in a bridge environment, to plan and execute timely, appropriate responses in both routine and emergency situations, and to communicate effectively both with those on the bridge and those outside the ship. Local knowledge is not required and will not be tested.

(1) A cut–off score to enter the simulator exercise will be established after the written examination has been scored and combined with each applicant's experience points. The cut–off score reflects the lowest final score that the applicant could obtain and still be competitive with the other applicants once the simulator is factored in.

(2) The applicant's performance in the exercise will be evaluated by three evaluators selected by the Board: one from the Board's Pilot Evaluation Committee, one who is a state licensed pilot from another jurisdiction and one who is an industry representative with current or prior command on deep draft vessels. The evaluators will be trained by the Office of Examination Resources (OER) or contractors with equivalent psychometric qualifications and reviewed by OER.

(3) The following seven elements will be evaluated during the Bridge Simulator Exercise:

(A) Situational awareness

Assesses the applicant's appreciation of the situation the vessel is in at all times during the exercise, including relative motion, traffic, aids to navigation, effect of wind, current and other forces on the vessel, and ability to accurately filter and prioritize available information.

(B) Appropriate response

Assesses the applicant's response in routine transit including timeliness and appropriateness of rudder commands, engine orders and other orders to the bridge team.

(C) Ability to respond correctly under stress

Separately assesses the applicant's ability to respond under emergency or non–routine situations of increased stress.

(D) Communication and bridge presence

Assesses the applicant's ability to use concise, clear and pertinent communications using proper terminology in communicating with the bridge and evaluation teams and on the radio, and assesses the applicant's professional composure, demeanor and ability to communicate warranted self–confidence which inspires confidence in the rest of the bridge team that the vessel's navigation is in good hands.

(E) Fundamental shiphandling

Assesses the applicant's knowledge of proper and timely use of engine and rudder commands and understanding of the ship's response to those commands.

(F) Bridge resource management

Assesses the applicant's proper use of all personnel and equipment resources available during the exercise.

(G) Rules of the road

Assesses the applicant's proper application of the navigational rules of the road to the situations presented.

(4) The exercise will be videotaped and recorded with sufficient detail to allow for meaningful review.

(5) An applicant must achieve a passing score on the bridge simulator exercise to be qualified to compete for final selection. The passing score will be established with the assistance of the Office of Examination Resources (OER) or contractors with equivalent psychometric qualifications and reviewed by OER.

(j) Final selection for entry into the training program shall be based on the combined scores from the applicant's experience points, written examination and simulator exercise, with each given equal weight, in accordance with the following procedures:

(1) All applicants receiving at least 15 experience points and achieving passing scores on both the written examination and the simulator exercise shall be placed on an eligibility list in order of their combined scores, highest score first.

(2) The eligibility list may be used by the Board to fill openings in the training program for up to three years from the date the list is accepted by the Board.

(3) Applicants on the eligibility list must maintain all minimum eligibility requirements set forth in subsection (e), including recency of experience, through the date of the applicant's acceptance of an opening in the training program, and must keep Board staff informed of the most expeditious means of being contacted in the event of an opening in the training program.

(4) Openings in the training program shall be offered to applicants in their order on the eligibility list. An applicant shall have five (5) business days (weekends and state holidays excluded) from the date of notification in which to inform the Board of his or her continued eligibility and agreement to commence the contracting process.

(5) An applicant accepting entry into the training program shall submit to the Board written confirmation of acceptance and verified documentation of continued eligibility as soon as practicable and shall execute all necessary contracting documents within five (5) business days from the date of notification that the documents are available for execution.

(6) Failure to accept the offer of an opening in the training program or to execute the contracting documents within the periods set forth in this subsection shall result in the applicant's name being placed at the bottom of the current eligibility list and the opening shall be offered to the next applicant on the list. The provisions of this subsection effecting an applicant's position on the eligibility list shall not apply if the applicant's failure to timely accept the offer or to timely execute the contracting documents was caused by the applicant's call to active duty in the Armed Forces of the United States.

(7) At the time that an applicant is informed of an opening in the training program, he or she shall be informed:

(A) of the effect of the failure to communicate acceptance in accordance with this subsection;

(B) of the effect of the failure to timely execute contracting documents;

(C) that there are no guarantees of further openings in the training program prior to the expiration of the current eligibility list; and

(D) that there are no guarantees that the applicant will achieve the same position on any future eligibility list.

(8) An applicant on the eligibility list may request removal of his or her name from the list at any time.

(k) The Executive Director will review or cause to be reviewed all applications to determine that the applicant meets all minimum qualifications and to assess experience points. Each applicant will be informed of the results of that review.

(l) The Executive Director is authorized to reject, without further Board action:

(1) incomplete applications, including all applications which do not include verified documentation that establishes that the applicant has met all minimum qualifications;

(2) applications which the Executive Director determines contain inaccurate or misrepresented information affecting the applicant's minimum qualifications or experience unless the applicant can establish to the satisfaction of the Executive Director that the inaccuracy or misrepresentation was accidental or the result of excusable neglect, and that, as corrected, the applicant continues to meet all minimum qualifications.

(m) A Selection Appeal Committee shall be appointed for each pilot trainee selection and shall be made up of three Board members. The committee shall be made up of one industry, one pilot and one public member. If no members from a particular category are available to act on an appeal, then the committee shall be made up from the remaining categories.

(1) Applicants whose applications have been rejected or who seek Board review of any other issue raised by the selection process shall submit their appeal to the Executive Director in writing, stating the basis for the appeal, supported by all written documents necessary to decide the appeal.

(2) Appeals shall be submitted no later than 30 days following the action being appealed. Notwithstanding the above, appeals of actions which preclude the applicant from taking the written test must be received no later than 15 days before the written test; appeals relating to the written test shall be submitted before the applicant leaves the testing facility.

(3) Upon receipt of an appeal, the Executive Director shall promptly forward one copy to each Selection Appeal Committee member, along with such additional documents as the Executive Director deems relevant and his or her comments responding to the issues raised on appeal.

(4) The Selection Appeal Committee shall meet expeditiously at the date, time and place determined by the chair in conformance with applicable open meeting act laws in order to consider and decide the appeal. The committee may request such additional information or documents as it deems pertinent; however, oral testimony or arguments will ordinarily not be accepted.

(5) Applicants who have submitted an appeal shall keep Board staff informed of the most expeditious means of being contacted during the pendency of the appeal.

(6) Upon deciding the appeal, the Selection Appeal Committee shall issue a written decision, which shall constitute the decision of the Board and shall be final. A copy of the decision shall be provided to the applicant.

(7) If the Selection Appeal Committee finds the appeal has merit, it may order such relief as is authorized under this section.

(n) An applicant's family relationship by blood or marriage to a current or former pilot shall not be considered for any purpose in the selection of pilot trainees.

(o) Anyone participating in the selection process, including without limitation, those involved in evaluating an applicant's experience points, written examination or bridge simulator exercise, and members of the Selection Appeal Committee or the Board shall disqualify himself or herself and withdraw from participation in the selection process if he or she is related by blood or marriage to any applicant under consideration or, for any reason, cannot be fair and impartial in the selection process, or shall disclose such relationship to the Board. Insofar as applicable, the provisions of California Government Code Section 11512(c) regarding disqualification of an agency member from administrative hearings shall guide the Board in determining whether a selection process participant or prospective participant who does not voluntarily disqualify himself or herself should be disqualified from participating in the selection process.

(p) All documents and records pertaining to an application shall be retained for at least five years.

NOTE: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Sections 1101, 1141, 1142, 1171, 1171.5, 1175, 1177 and 1178, Harbors and Navigation Code.

HISTORY

1. Repealer and new section filed 5–9–88; operative 6–8–88 (Register 88, No. 20). For prior history, see Register 83, No. 1.
2. Renumbering of former section 213 to section 216, renumbering and amendment of former section 211 to section 213, and amendment and relocation of article 4 heading filed 8–12–93; operative 9–13–93 (Register 93, No. 33).
3. Repealer of subsections (b)–(d) and new subsections (b)–(s) filed 1–26–96; operative 2–25–96 (Register 96, No. 4).
4. Repealer of former subsections (e)–(s) and new subsections (e)–(p) filed 8–12–99; operative 9–11–99 (Register 99, No. 33).
5. Amendment filed 6–3–2003; operative 7–3–2003 (Register 2003, No. 23).
6. Amendment of subsection (i) and new subsections (i)(1)–(8) filed 7–23–2003; operative 8–22–2003 (Register 2003, No. 30).
7. Amendment filed 12–6–2004; operative 1–5–2005 (Register 2004, No. 50).

§ 214. Pilot Trainee Training Program.

(a) In order to be considered for licensing as a pilot, a pilot trainee must successfully complete the training program conducted and supervised by the Pilot Evaluation Committee for the Board. The Board shall issue a certificate of completion to a pilot trainee only when it determines that the trainee has successfully completed the pilot trainee training program. The Board may rely upon, but shall not be bound by the recommendations of its Pilot Evaluation Committee in determining whether a trainee has successfully completed the training program or whether or when the trainee should be licensed as a pilot. The Board is not required to license an individual as a pilot at any time after issuance of the certificate of completion authorized by this subsection. If a license is issued, it shall be issued to the most qualified trainee who has successfully completed the training program. Order of completion of the program is not the determining factor.

(b) The training program prescribed herein shall include the following topics:

(1) area geography;

(2) port and waterway configuration;

(3) hydrography (channel depths and widths, bottom configuration);

(4) hydrology and hydraulics;

(5) tides and currents;

(6) winds and weather;

(7) aids to navigation (interaction with and information they convey);

(8) bottom composition;

(9) marine facilities;

(10) other traffic and operations (including commercial fishing vessels, recreational boating, dredging and marine regattas);

(11) air draft (for bridges and overhead wires);

(12) communications;

(13) applicable laws, rules and regulations;

(14) marine traffic regulation (including Vessel Traffic Service);

(15) local and seasonal traffic patterns and densities;

(16) ship maneuvering behavior for all vessel types to be piloted including hydrodynamic interactions with respect to other vessels, facilities and channel bathymetry;

(17) advantages, limitations and effect on shiphandling of various types of main propulsion and auxiliary maneuvering machinery;

(18) shiphandling for piloting, anchoring, docking and undocking, maneuvering with and without the aid of tugs and emergency situations;

(19) tug control (for maneuvering assistance);

(20) use of ground tackle to aid maneuvering;

(21) navigation systems (traditional and electronic);

(22) radar systems (manual and automated); and

(23) marine and environmental safety requirements.

(c) The training program for each pilot trainee shall consist of a minimum of one year and a maximum of three years of training. The program may include classroom training and training provided by outside contractors and shall include assignments to ride as an observer on tugs engaged

in ship assist work. In addition, the program shall include a minimum of 300 trips while under the direct supervision of a pilot or inland pilot, riding as observer or maneuvering vessels of various sizes and classes on the Bays of San Francisco, San Pablo and Suisun. A minimum of 50 trips shall be with members of the Pilot Evaluation Committee and at least 10 of those trips shall be within the last three months before the committee recommendation that the trainee be issued a certificate of completion. Pilot trainee assignments shall be under the general supervision of the Pilot Evaluation Committee and may be made by the Port Agent, his or her designee, or a member of the Pilot Evaluation Committee.

(d) A stipend, funded by a pilot trainee surcharge to pilotage rates, may be paid to pilot trainees. The amount of the stipend, if any, paid to a pilot trainee shall be determined solely by the Board, provided that trainees at similar phases of the program shall receive an equal stipend, if any stipend is given.

(e) A pilot or inland pilot supervising a pilot trainee shall prepare an evaluation report on the performance of the pilot trainee to the Pilot Evaluation Committee at the times and in the manner prescribed by the Committee.

(f) The Board may dismiss a pilot trainee from the training program at any time during the first year of training without cause. After the first year of training, a pilot trainee may be dismissed from the training program if the Board, after a hearing comparable to that provided to a public employee under Government Code § 11126(a), determines that he or she:

(1) no longer meets the requirements of Section 213;

(2) has violated the Code or these regulations;

(3) has failed to carry out the terms and conditions of the training program;

(4) has willfully disobeyed a lawful order of the Board, the Pilot Evaluation Committee, the Port Agent, his or designee or the pilot supervising his or her training;

(5) committed an act of misconduct while on duty as a trainee;

(6) was intoxicated or under the influence of a substance which appreciably impaired his or her ability to conduct the duties of a pilot trainee while on duty as a trainee;

(7) failed to meet the conditions of probation within the period prescribed, if placed on probation under subsection (g) of this section; or

(8) failed a chemical test for dangerous drugs, as defined in Section 202.

(g) A pilot trainee may, on such conditions and for such period of time as the Board may impose, be suspended from the training program or be placed on probation if the Board determines that such action is warranted because of:

(1) a change in the mental or physical health or good moral character of the pilot trainee;

(2) a lapse, suspension or revocation of the trainee's U. S. Coast Guard license;

(3) misconduct while on duty as a trainee; or

(4) inadequate performance in the training program.

(h) In determining whether a pilot trainee has successfully completed the training program or whether the trainee should be licensed as a pilot, the Board and Pilot Evaluation Committee shall consider whether the trainee has met each of the following:

(1) All statutory prerequisites for being licensed as a pilot;

(2) Maintained an average score of at least 4.0 on a 5.0 scale on the evaluations by members of the Pilot Evaluation Committee during each of the last three (3) months immediately preceding the Committee's recommendations; and

(3) Has adequately demonstrated:

(A) local knowledge for the Bays of San Francisco, San Pablo and Suisun, including:

1. limits of all local pilotage areas;

2. names, positions and characteristics of all buoys, beacons, lights, markers, fog signals and other fixed aids to navigation;

3. names, locations and characteristics of all channels, shoals, headlands and points;

4. names, locations, characteristics and vertical clearances of all bridges, cables and other overhead obstructions to navigation;

5. depths of water;

6. set, rate, rise and duration of tides, characteristics of tidal currents, and use of tide tables and real time tide data collection system;

7. courses and distances for each channel;

8. names, locations and characteristics of anchorages;

9. names, locations and waterside characteristics of all berths, terminals and docking facilities; and

10. systems of radio navigational warning broadcasts and the type of information likely to be included.

(B) a working knowledge of the fundamentals of shiphandling, including:

1. shiphandling in piloting waters;

2. anchoring;

3. docking and undocking;

4. appropriate use of tugs;

5. shiphandling in emergency situations; and

6. appropriate vessel speed control.

(C) bridge presence, including proper and timely handling of all shipboard communications using standard terminology;

(D) proper and timely handling of communications with other vessels, Vessel Traffic Service and other entities external to the vessel;

(E) situational awareness, contingency planning and the ability to keep the vessel on track;

(F) appropriate and timely use of bridge equipment, including shipboard navigation and collision–avoidance aids, and knowledge of their capabilities and limitations;

(G) appropriate response to vessel traffic;

(H) familiarity with maneuvering characteristics of all types of ships that routinely enter the pilotage grounds, including knowledge of capabilities and limitations of typical propulsion and steering systems on board such vessels;

(I) understanding environmental factors affecting ship performance, such as wind, current, tide, channel configuration, water depth, bottom, bank and ship interaction including squat;

(J) familiarity with bridge team management, including master–pilot relationship;

(K) familiarity with all relevant international, national, state and local laws and regulations applicable to navigational safety, rules of the road, pollution prevention, and contingency planning;

(L) familiarity with lines of communication to local authorities, including the U.S. Coast Guard, U.S. Army Corps of Engineers, State Office of Oil Spill Prevention and Response and the Board.

(M) familiarity with personal techniques for survival at sea and personal safety, including emergency first aid, cardio–pulmonary resuscitation (CPR) and hypothermia remediation; and

(N) consistency of acceptable performance.

NOTE: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Sections 1101(e), 1114.5, 1171.5, 1175, 1177 and 1178, Harbors and Navigation Code.

HISTORY

1. Repealer and new section filed 5–9–88; operative 6–8–88 (Register 88, No. 20). For prior Article 5. Licensing history, see Registers 82, No. 2; 78, No. 49 and 76, No. 32.
2. Renumbering of former section 214 to section 217 and renumbering and amendment of former section 212 to section 214 filed 8–12–93; operative 9–13–93 (Register 93, No. 33).
3. Amendment filed 1–14–97; operative 2–13–97 (Register 97, No. 3).
4. New subsection (f)(8) and amendment of NOTE filed 4–20–98; operative 5–20–98 (Register 98, No. 17).

5. Amendment and reorganization of subsections (h)–(h)(10) to subsections (h)–(h)(3)xiv. filed 4–20–99; operative 5–20–99 (Register 99, No. 17).

6. Amendment of section and NOTE filed 6–3–2003; operative 7–3–2003 (Register 2003, No. 23).

§ 215. Pilot and Inland Pilot Training.

(a) Every pilot and inland pilot must complete the training program established by this section. The Board may revoke or suspend the license of a pilot or inland pilot if he or she fails to successfully complete the training program during the period specified by the Board.

(b) The training program for each pilot and inland pilot shall consist of two parts:

(1) Attend a manned scale model shiphandling course at least six days in length once every five years which provides realistic experience with maneuvering characteristics of major commercial vessel types that routinely transit the waters under the Board's jurisdiction and under harbor and approach conditions that replicate those that are found in the San Francisco Bay Area; and

(2) Attend a combination course at least five days in length completed at least once every three years covering at least the following topics:

(A) Bridge resource management for pilots;

(B) Shiphandling on a computer driven ship's bridge simulator including emergency maneuvering and shiphandling in close quarters;

(C) Emergency medical response;

(D) Advanced electronic navigation systems; and

(E) Regulatory review.

(c) The Executive Director shall prepare and maintain a list naming each pilot and inland pilot who is to attend the required training courses during the following twelve months, and the dates of such attendance. The list shall be provided to the Port Agency monthly, who shall notify the pilots on the list, and shall be provided to each inland pilot by the Executive Director.

NOTE: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Section 1171.5(a), (b), (c), (e) and (g), Harbors and Navigation Code.

HISTORY

1. New section filed 1–26–94; operative 2–25–94 (Register 94, No. 4). For prior history, see Register 93, No. 33.

2. Amendment redesignating subsections (b)(2)a.–e. as subsections (b)(2)(A)–(E) and amendment of subsection (c) filed 6–3–2003; operative 7–3–2003 (Register 2003, No. 23).

Article 5. Licensing

§ 216. Issuance of Licenses.

(a) An application for a pilot license or for the renewal of a pilot license or an inland pilot license shall be signed by the applicant and presented to the Administrative Assistant/Secretary.

(b) A license issued to a pilot or inland pilot by the Board, and each renewal thereof, shall be valid for a period of one year.

(c) No original pilot license shall be issued, and no pilot license originally issued after December 31, 1987 shall be renewed, until the applicant provides proof satisfactory to the Board that he or she possesses a valid federal license with endorsements thereon allowing the applicant to pilot vessels on the high seas and on all waters of the Bays of San Francisco, San Pablo and Suisun, including the San Joaquin River and the Sacramento deep water ship channel.

(d) All pilots shall hold and maintain proper federal endorsements allowing them to pilot, at a minimum, on the high seas and on all waters of the Bays of San Francisco, San Pablo and Suisun excluding the San Joaquin River and the Sacramento deep water ship channel. No pilot license originally issued before December 31, 1987 shall be renewed until the applicant for the license provides proof satisfactory to the Board that he or she possesses a valid federal license with endorsements thereon allowing the applicant to pilot vessels on the high seas and on all waters of the Bays of San Francisco, San Pablo and Suisun, excluding the San Joaquin River and the Sacramento deep water ship channel.

(e) No original pilot license shall be issued unless the applicant has satisfactorily completed the pilot trainee training program.

(f) A pilot license and an inland pilot license shall be renewed only upon successful completion of the physical examination required by Section 217.

(g) A pilot license shall not be renewed if the applicant did not actively pilot vessels under the authority of that license for any consecutive period of one year unless he or she has submitted evidence satisfactory to the Board that he or she is qualified and was either medically disabled, serving as Port Agent, or had been granted a leave of absence by the Board during that period.

(h) An existing inland pilot license shall not be renewed if the applicant did not actively pilot vessels under the authority of that license for any consecutive period of one year unless he or she has submitted evidence satisfactory to the Board that he or she is qualified and was medically disabled.

NOTE: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Sections 1141, 1142, 1170, 1171, 1171.5(a) and (f), 1172, 1173, 1177 and 1178, Harbors and Navigation Code.

HISTORY

1. Renumbering and amendment of former section 213 to section 216 filed 8–12–93; operative 9–13–93 (Register 93, No. 33).

2. Amendment filed 6–3–2003; operative 7–3–2003 (Register 2003, No. 23).

§ 217. Medical Examination.

(a)(1) An applicant for a pilot trainee position or for a pilot license, and an applicant for the renewal of any license, shall be medically examined prior to entry into the training program, issuance of the original license or the renewal of his or her license, as applicable. The examination shall be performed by a physician designated by the Board for the purpose of determining his or her mental and physical health and fitness for duty as a pilot, inland pilot or pilot trainee. The examination prescribed herein shall be conducted in accordance with the Code, these regulations and the guidelines set forth in the REFERENCE GUIDE FOR PHYSICIANS PHYSICAL EXAMINATION FOR RETENTION OF SEAFARERS IN THE U.S. MERCHANT MARINE as adopted by the Seafarers Health Improvement Program (SHIP) Committee on April 26, 1985, and which is hereby incorporated by this reference, and a copy of which shall be on file in the Board office. An applicant for renewal of an existing pilot or inland pilot license shall be examined as set forth in subsection (b) of this section. The Board shall maintain a list of physicians, licensed by the State of California, who have agreed to perform the examinations required by these regulations.

(2) The cost of any medical examination required by these regulations shall be borne exclusively by the Board.

(3) A pilot or inland pilot on medical disability leave when his or her license expires may, within 30 days after the termination of the disability, apply for renewal of his or her license.

(b)(1) A license renewal medical examination shall not be required for a pilot or inland pilot who will be 35 years of age or less on the date his or her license expires, unless at least four years will have elapsed since his or her previous examination pursuant to the requirements of this section.

(2) A license renewal medical examination shall not be required for a pilot or inland pilot who will be 36 years of age but less than 50 years of age on the date his or her license expires, unless at least two years will have elapsed since his or her previous examination pursuant to the requirements of this section.

(3) A license renewal medical examination shall not be required for a pilot or inland pilot who will be 50 years of age or over on the date his or her license expires, unless at least one year has elapsed since his or her previous examination pursuant to the requirements of this section.

(c)(1) A physician performing an examination required by these regulations shall retain the records and any detailed report of the examination and shall not provide either to the Board, except upon the written authorization of the person examined or when the physician has been notified that an appeal has been made as authorized by subsection (e)(4) of this section. The examining physician shall provide the results of his or her examination to the Administrative Assistant/Secretary by stating, in writing, only one of the following possible findings:

(A) Fit for Duty ("FFD"), which shall signify that the examining physician finds the person examined mentally and physically qualified for duty as a pilot, inland pilot or pilot trainee in all areas addressed in the Code, these regulations and the guidelines set forth in the REFERENCE GUIDE FOR PHYSICIANS cited in subsection (a)(1) of this section.

(B) Not Fit for Duty ("NFFD"), which shall signify that the examining physician finds the person examined mentally or physically unqualified for duty as a pilot, inland pilot or pilot trainee in one or more of the areas addressed in the Code, these regulations and the guidelines set forth in the REFERENCE GUIDE FOR PHYSICIANS cited in subsection (a)(1) of this section.

(C) Permanently Not Fit for Duty ("PNFFD"), which shall signify that the examining physician finds the person examined mentally or physically unqualified for duty as a pilot, inland pilot or pilot trainee in one or more of the areas addressed in the Code, these regulations and the guidelines set forth in the REFERENCE GUIDE FOR PHYSICIANS cited in subsection (a)(1) of this section, and the examining physician is of the opinion that the mental or physical condition of the person examined is such that he or she will never again be mentally or physically qualified for duty as a pilot, inland pilot or pilot trainee, as appropriate.

(d) If the Board obtains information from a source other than the report of a Board ordered medical examination made pursuant to subsection (c) of this section that at any time leads it to believe that a pilot or inland pilot has become unable to comply with the standards of health or physical condition required to perform the duties of a pilot or inland pilot, that person shall be required to be examined in accordance with the Code, these regulations and the guidelines set forth in the REFERENCE GUIDE FOR PHYSICIANS cited in subsection (a)(1) of this section. The Board may, without a hearing, temporarily suspend the license of the pilot or inland pilot involved in accordance with § 1180 of the Code pending a hearing and decision on whether or not he or she complies with the standards of health and physical condition necessary to perform the duties of a pilot or inland pilot. A pilot or inland pilot required to be examined pursuant to this subsection and whose license has been temporarily suspended shall submit to an examination within the period of the suspension. A pilot's or inland pilot's failure to submit to the examination required herein may be considered by the Board as evidence sufficient to warrant a finding that such pilot or inland pilot is either NFFD or PNFFD and the Board shall then act in accordance with subsection (e) of this section.

(e)(1) A pilot or inland pilot who is found to be either NFFD or PNFFD by a Board examining physician shall, upon the report being received by the Board, immediately be placed on medical disability leave with the right to appeal the medical finding as provided for in the Code and these regulations. An applicant for a license who is found to be either NFFD or PNFFD shall have his or her application suspended until such time as he or she is found FFD.

(2) A pilot trainee who is found to be either NFFD or PNFFD by a Board examining physician shall, upon the report being received by the Board, immediately be suspended as a pilot trainee with the right to appeal the finding as provided for in the Code and these regulations. If the Board obtains information from a source other than the report of a Board ordered medical examination made pursuant to this section that at any time leads it to believe that a pilot trainee has become unable to comply with the standards of health or physical condition required to perform the duties of a pilot trainee, he or she shall be required to be examined in accordance with the Code, these regulations and the guidelines set forth in the REFERENCE GUIDE FOR PHYSICIANS cited in subsection (a)(1) of this section.

(3) Immediately upon receipt of a report that a pilot, an inland pilot, an applicant for an original license, or a pilot trainee is NFFD or PNFFD, the Board shall mail notice to such person that he or she has been placed on medical disability leave, that his or her application has been suspended or that he or she has been suspended from the pilot trainee training program, as applicable.

(4) A pilot, an inland pilot, an applicant for an original license, or a pilot trainee reported by a Board examining physician to the Board as NFFD or PNFFD may file a written notice of appeal with the Board within 60 days following the date of notification by the Board that he or she has been placed on medical disability leave, has had his or her application for a license suspended, or has been suspended as a pilot trainee, as applicable. A notice of appeal shall specify the determination being appealed and shall designate a physician of the appellant's choice to be assigned to the appellate examining panel. Upon receipt of a notice of appeal, the Board shall immediately arrange to have the appellant examined by one physician selected by the Board from its panel of physicians, by the physician designated by the appellant in his or her notice of appeal, and by a third physician selected by agreement of the first two physicians. If a notice of appeal fails to designate a physician of the appellant's choice, it shall not be considered defective; however, in such case the Board shall select three physicians from its panel of physicians to review the previous finding of NFFD or PNFFD.

(5) Following selection of the physicians constituting the appellate examining panel, the Administrative Assistant/Secretary shall immediately arrange for the examination of the appellant by each designated physician and provide written notice to the appellant of the date, time, and location for each scheduled examination. If a designated physician cannot complete the required examination and report by the time set by the Board, then the Board, the appellant, or the two physicians, as appropriate, shall select another physician. If at least two of the designated physicians find the appellant to be FFD, then the appellant, if otherwise qualified, shall be restored to the status held immediately prior to being reported to the Board as NFFD or PNFFD.

(6) In the event that a pilot or inland pilot fails to file a timely notice of appeal from a finding of NFFD, or at least two of the physicians constituting the appellate examining panel find the appellant NFFD, he or she shall be continued on medical disability leave. In the event that a pilot or inland pilot fails to file a timely notice of appeal from a finding of PNFFD, or at least two of the physicians constituting the appellate examining panel find the appellant PNFFD, the Board shall hold a hearing within 45 days following the expiration of the appeal period or receipt of the report of the appellate examining panel to determine whether to continue the pilot or inland pilot on medical disability leave or whether to revoke or suspend his or her license, including the placing of any conditions on the suspension if the Board votes for such an action. Unless otherwise ordered by the Board, a decision by it to continue a pilot or inland pilot in a medical disability leave status may subsequently be reviewed by it at the request of the affected pilot or inland pilot or any other interested party, or by the Board on its own initiative. If it is the affected pilot or inland pilot who requests a subsequent hearing, the hearing shall be held within 30 days after the next regularly scheduled meeting of the Board following receipt by it of the request. If it is the Board that acts to hold a subsequent hearing, the hearing shall be held no earlier than 20 days, but no later than 30 days after the date the notice of such a hearing was mailed to the affected pilot or inland pilot.

(7) In the event that an applicant for an original license fails to file a timely notice of appeal from a finding of NFFD, his or her application shall be suspended until the applicant is found FFD, but not to exceed a period of one year. In the event that an applicant for an original license fails to file a timely notice of appeal from a finding of PNFFD, his or her application shall be denied by the Board at its next regularly scheduled meeting.

(8) In the event that a pilot trainee fails to file a timely notice of appeal from a finding of NFFD or PNFFD, the Board shall review the matter to determine whether the pilot trainee shall be continued in the training program subject to attaining a FFD status within a time period specified by the Board, or whether the pilot trainee shall be terminated from the training program. Unless otherwise ordered by the Board either determination may subsequently be reviewed by it at the request of the affected pilot trainee or by the Board on its own initiative.

(9) A hearing conducted by the Board to determine if a pilot or inland pilot complies with the standards of health or physical condition required by the Code, these regulations or the REFERENCE GUIDE FOR PHYSICIANS cited in subsection (a)(1) of this section, shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. At such a hearing, the Board shall have all the powers granted therein and by the Code.

NOTE: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Sections 1106, 1171, 1171.5(a), (c) and (e), 1175(a) and (b), 1176, 1180, 1181(i) and 1183, Harbors and Navigation Code.

HISTORY

1. New section filed 5-9-88; operative 6-8-88 (Register 88, No. 20). For history of former section, see Registers 59, No. 11 and 57, No. 6.
2. Renumbering of former section 217 to section 219 and renumbering and amendment of former section 214 to section 217 filed 8-12-93; operative 9-13-93 (Register 93, No. 33).
3. Amendment of subsections (a)(1), (d) and (e)(7) filed 6-3-2003; operative 7-3-2003 (Register 2003, No. 23).

Article 6. Government of Pilots, Inland Pilots and Trainees

§ 218. Duties of Port Agent.

(a) A majority of all of the pilots licensed by the Board shall select from among their members one person to act as Port Agent, whose duties shall be to carry out the orders of the Board, under applicable laws, and to otherwise administer the affairs of the pilots as set forth herein. The selection of the Port Agent shall be subject to confirmation by the Board.

(b) The Port Agent shall be responsible for the general supervision and management of all matters related to the business and official duties of pilots.

(c) The Port Agent shall:

(1) Assign Pilots to Vessels.

(A) When assigning pilots licensed by the Board 12 months or less, a supervisory pilot shall also be assigned for the following vessels unless the vessel is proceeding directly from sea to anchorage or from anchorage to sea:

1. all passenger vessels
2. all tank vessels with a length overall in excess of 800 feet
3. all dry cargo vessels with a length overall in excess of 900 feet unless the vessel is outbound and will not require turning for the outbound trip
4. all vessels with a length overall in excess of 700 feet proceeding to or from a drydock, marine repair facility, explosives handling facility, or Richmond Inner Harbor
5. all vessels with a length overall in excess of 600 feet proceeding to or from Redwood City, Pittsburg, Antioch, Sacramento or Stockton

(B) When assigning pilots licensed by the Board 18 months or less, a supervisory pilot shall also be assigned for the following vessels unless the vessel is proceeding directly from sea to anchorage or from anchorage to sea:

1. all passenger vessels
2. all tank vessels with a length overall in excess of 850 feet
3. all dry cargo vessels with a length overall in excess of 950 feet unless the vessel is outbound and will not require turning for the outbound trip
4. all vessels with a length overall in excess of 750 feet proceeding to or from a drydock, marine repair facility, explosives handling facility or Richmond Inner Harbor
5. all vessels with a length overall in excess of 700 feet proceeding to or from Redwood City, Pittsburg, Antioch, Sacramento or Stockton

(C) When assigning pilots licensed by the Board 24 months or less, a supervisory pilot shall also be assigned for the following vessels unless the vessel is proceeding directly from sea to anchorage or from anchorage to sea:

1. all passenger vessels
2. all tank vessels with a length overall in excess of 900 feet
3. all vessels with a length overall in excess of 800 feet proceeding to or from a drydock, marine repair facility, explosives handling facility or Richmond Inner Harbor
4. all vessels with a length overall in excess of 750 feet proceeding to or from Redwood City, Pittsburg, Antioch, Sacramento or Stockton

(D) For purposes of this subsection, the Port Agent may permit the supervisory pilot to board inbound vessels and disembark from outbound vessels in central San Francisco Bay.

(E) The Port Agent may deviate from the requirements of this subsection to assign a supervisory pilot whenever, in his or her judgment, the safety of persons and property and the protection of the marine environment would be better served by such deviation, and shall promptly report such deviation and the reasons therefor to the Board's Executive Director.

(F) When assigning pilots to vessels transiting Monterey Bay, the Port Agent shall assign only those pilots holding current pilotage endorsements for Monterey Bay.

(2) Prepare and administer the pilots' vacation schedule.

(3) Represent pilots before the Board and its committees.

(4) Collect data, prepare accounts, and make the payments to the Board required of pilots by the Code and these regulations. The data referred to in this subsection shall include at a minimum, the name, class, high gross tonnage, and deep draft of each vessel subject to pilotage.

(5) Identify each boat used by the pilots and notify the Board of the names of the pilots responsible for the management of each such boat.

(6) Report to the Board all accidents, groundings, collisions or similar navigational incidents involving vessels to which a pilot has been assigned.

(7) Report to the Board any matter which, in his or her opinion, affects the ability of a pilot to carry out his or her lawful duties.

(8) Ensure that at all times adequate pilots and pilot vessels are available for the performance of the lawful duties of pilots, except when weather or other conditions result in the Bar being closed.

(9) Order the Bar closed for reasons of public, pilot, or vessel safety.

(d) In carrying out his or her duties, the Port Agent shall be primarily guided by the need for safety of persons, property, vessels and the marine environment.

(e) The Port Agent may delegate to any other pilot one or more of the duties set forth herein if, in his or her opinion, delegation is necessary to assure its proper performance. The Port Agent shall, however, remain responsible for the proper performance of any duty so delegated.

(f) The Port Agent shall report to the Board in writing whenever any pilot is absent from duty because of illness lasting longer than seven days. The report shall state the nature of the illness, the probable duration of the pilot's absence from duty and the anticipated date of his or her return to duty. The Port Agent shall also report to the Board, in writing the date of departure from and return to duty of any pilot who is on a leave of absence.

(g) In the event of a serious marine incident, as that term is defined in Title 46, Code of Federal Regulations, Section 4.03-2, or in any successor regulations thereto, which incident involved an assigned pilot, the Port Agent shall direct that pilot to undergo timely drug and alcohol testing, pilotage duties and safety permitting. Such testing shall conform to applicable regulations of the U.S. Coast Guard for post incident drug and alcohol testing of merchant vessel personnel (currently at Title 46, Code of Federal Regulations, Subpart 4.06). In the event of a navigational incident involving an assigned pilot which results in the holing of the hull of a vessel, a rebuttable presumption shall exist that the incident meets the definition of a serious marine incident for the purposes of this subsection.

(h) If the Port Agent has reasonable cause to believe that an assigned pilot has been impaired by drug or alcohol while on duty, he or she shall direct that pilot to undergo timely drug and alcohol testing, pilotage duties and safety permitting. Where practicable, the Port Agent shall make his or her reasonable cause determination in combination with two other pilots. The Port Agent shall expeditiously inform the U.S. Coast Guard and the Board, orally and in writing, of his or her determination and the

basis therefor. Such drug and alcohol testing shall conform to applicable regulations of the U.S. Coast Guard for reasonable–cause drug and alcohol testing of merchant vessel personnel (currently at Title 46, Code of Federal Regulations, Sections 16.250 and 16.301 to 16.380).

(i) Upon being directed by the Port Agent to obtain drug and alcohol testing pursuant to this section, a pilot shall expeditiously proceed, piloting duties and safety permitting, to an appropriate facility used by the pilots for drug and alcohol testing and meeting U.S. Coast Guard requirements (currently at Title 46, Code of Federal Regulations, Sections 16.301 and 16.340), and shall obtain such drug and alcohol testing, as directed. An unreasonable failure by a pilot to obtain drug and alcohol testing as directed under this section shall result in a rebuttable presumption that the pilot had been impaired by drug or alcohol while on duty in violation of Harbors and Navigation Code Section 1181(f). In addition, the Port Agent shall promptly notify the U.S. Coast Guard and the Board, orally and in writing, of the failure by a pilot to undergo drug and alcohol testing as directed under this section.

NOTE: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Sections 1100, 1101(c), 1101(f), 1130, 1171.5, 1177(c) and 1181(f), Harbors and Navigation Code; and Title 46, Code of Federal Regulations, Section 4.03–2 and Part 16.

HISTORY

1. New section filed 5–9–88; operative 6–8–88 (Register 88, No. 20). For history of former section, see Registers 59, No. 11 and 57, No. 11.
2. Renumbering of former section 218 to section 220 and renumbering and amendment of former 215 to section 218 filed 8–12–93; operative 9–13–93 (Register 93, No. 33).
3. New subsections (g)–(i) and amendment of NOTE filed 6–16–94; operative 7–18–94 (Register 94, No. 24).
4. Amendment of subsection (d) and NOTE filed 2–23–95; operative 3–27–95 (Register 95, No. 8).
5. Amendment of subsection (c)(1) filed 7–31–95; operative 8–30–95 (Register 95, No. 31).
6. Amendment of section and NOTE filed 6–3–2003; operative 7–3–2003 (Register 2003, No. 23).
7. Amendment of subsections (c), (c)(1)(A), (c)(1)(A)3. and (c)(1)(A)5., repealer of subsection (c)(1)(A)6., amendment of subsections (c)(1)(B), (c)(1)(B)3., (c)(1)(B)5., (c)(1)(C) and (c)(1)(C)4. and amendment of NOTE filed 12–6–2004; operative 1–5–2005 (Register 2004, No. 50).

§ 219. Duties of Pilots and Inland Pilots.

(a) Each pilot and inland pilot, either in person or in the case of a pilot, through the Port Agent, shall bill and use all legal means to collect from each vessel or other responsible party the surcharges established by the Code and the Board and shall transmit all such revenues to the Board monthly or at such later time as the Board may direct. Each pilot, either in person or through the Port Agent, shall bill and use all legal means to collect the pension plan surcharge from each vessel or other responsible party at the rates determined pursuant to Section 1165 of the Code, and shall transmit monthly all such revenues to the fiduciary agent selected by the Board pursuant to Section 1162 of the Code. The Port Agent or any pilot or inland pilot may petition the Board for approval to cease or limit collection efforts required by this section on the basis that such efforts would not be economic in light of the costs of collection. The Board may approve such petition if, in the opinion of the Board, such efforts would not be economic in light of the costs of collection. The Administrative Assistant/Secretary shall record the accounts in full detail in a book prepared for that purpose, which account book shall be a public record.

(b) A pilot designated by the Port Agent to pilot the next vessel requiring a pilot shall be on call, alert, and immediately available for assignment by the pilot office dispatcher. Every pilot is required to perform his or her full share of assignments as a pilot unless prevented by illness or other cause satisfactory to the Port Agent and the Board.

(c) The pilots shall keep one pilot boat cruising outside of the Bar for known arrivals and departures, except when an emergency condition exists or when the Bar is closed.

(d) A pilot on board a cruising pilot boat shall always take inbound vessels which desire the services of a pilot in their order of arrival. In case of simultaneous arrivals, the vessel closest to shore shall have priority. Except in cases of distress or medical emergency, vessels providing sufficient advance notification shall have priority over vessels providing insufficient or no notification.

(e) A pilot shall not leave a vessel outward bound inside the ten fathom curve without the express consent of the vessel's master.

(f) Pilot boats shall not be permitted to leave their particular service in port or at sea, except to assist a vessel in distress unless authorized by the Board or requested by the Coast Guard to do so.

(g) When a vessel with an assigned pilot on board is involved in a navigational incident, including, but not limited to, all incidents involving the grounding of a vessel, the striking of any object or injury or damage to persons or property, the pilot shall, as soon as possible, duties permitting, notify the Port Agent of the navigational incident by the most rapid means available. When the Port Agent becomes aware of a navigational incident involving a pilot, whether reported by a pilot or otherwise, he or she shall immediately notify the Executive Director of the Board or the Board's designated representative. If he or she is unable to notify that person, he or she shall notify any Board member. The pilot assigned to the vessel at the time of the navigational incident shall render a full and truthful signed written report of the navigational incident to the Board within a reasonable time after the incident. The statement required by this subsection shall not be used in evidence against a pilot in any hearing conducted pursuant to Section 221, except for the purpose of impeachment.

(h) When a vessel with an inland pilot on board is involved in a navigational incident, including but not limited to, all incidents involving the grounding of a vessel, the striking of any object or injury or damage to persons or property, the inland pilot shall, as soon as possible, duties permitting, notify the Executive Director of the Board or the Board's designated representative of the navigational incident by the most rapid means available. If he or she is unable to notify that person, he or she shall notify any Board member. The inland pilot assigned to the vessel at the time of the navigational incident shall render a full and truthful, signed written report of the navigational incident to the Board within a reasonable time after the incident. The statement required by this subsection shall not be used in evidence against an inland pilot in any hearing conducted pursuant to Section 221, except for the purpose of impeachment.

(i) There shall be at least two pilot boats in commission at all times, unless the Board has authorized a lesser number.

(j) A pilot shall not be permitted to use any pilot boat which has not been approved by the Board as a safe and suitable vessel for pilotage service. Each pilot boat shall be surveyed at least once every two years by a surveyor approved by the Board and shall not be operated unless the surveyor has rendered a written report that the boat is in a good and seaworthy condition with respect to its hull and equipment.

(k) A pilot, an inland pilot or the Port Agent, when notified to report in person to the Board, shall report as directed in the notification.

(l) A pilot shall pilot only the vessels assigned to him or her by the Port Agent.

(m) A pilot and an inland pilot shall keep his or her current address and residence telephone number on file with the Board by submitting the required information to the Administrative Assistant/Secretary in a timely fashion.

(n) A pilot and an inland pilot shall obey all regulations of the Board.

(o) All accounts rendered to the Board by or on behalf of a pilot or inland pilot shall be true and correct to the best of the pilot's or inland pilot's knowledge and belief. A pilot and an inland pilot is under a duty to inform himself or herself as to facts contained in any such accounting rendered to the Board.

(p) A pilot shall not be absent from duty for more than 30 consecutive days without obtaining a leave of absence from the Board, unless such absence is caused by his or her sickness or personal injury.

(q) A pilot incapacitated for medical reasons for more than seven consecutive days shall provide the Port Agent and the Board with a doctor's prognosis, if possible, of when the pilot will be fit to return to duty. If the medical disability continues for either 30 consecutive days or a total of 30 days in any 60 day period, the Board may require the pilot to be medically examined in accordance with subsection (d) of Section 217.

(r) A pilot and an inland pilot shall exhibit his or her license when requested to do so by the master of any vessel which the pilot or inland pilot has boarded.

(s) A pilot and an inland pilot shall not perform any of the duties of a pilot or an inland pilot while intoxicated or under the influence of any substance or combination of substances which so affects his or her nervous system, brain or muscles as to impair, to an appreciable degree, the ability to properly perform his or her duties.

(t) A pilot and an inland pilot shall not, through ignorance, willfulness or neglect, run a vessel on shore, or otherwise render a vessel liable for damage to persons, property or the marine environment during the performance of his or her duties as a pilot or inland pilot.

(u) A pilot and an inland pilot shall always obey the applicable Rules of the Road for the navigation of vessels and shall, under all circumstances, perform his or her duties in a manner so as not to endanger persons, property or the marine environment or cause damage, injury or loss of life.

(v) While engaged in any piloting activity, a pilot and an inland pilot shall obey all applicable laws and conduct himself or herself so as not to cause injury or damage to persons, property or the marine environment.

(w) Upon being directed by the Port Agent, or, in the case of an inland pilot, the Executive Director, to obtain drug or alcohol testing pursuant to the requirements of Section 218, the pilot or inland pilot shall expeditiously proceed, piloting duties and safety permitting, to an appropriate facility used by the pilots for drug or alcohol testing and meeting U.S. Coast Guard requirements (currently at Title 46, Code of Regulations, Sections 16.301 and 16.340), and shall obtain such drug or alcohol testing, as directed. An unreasonable failure by a pilot or inland pilot or inland pilot to obtain drug or alcohol testing as directed shall result in a rebuttable presumption that the pilot or inland pilot had been impaired by drug or alcohol while on duty in violation of Harbors and Navigation Code Section 1181(f).

(x) When a pilot is assigned to a vessel for remedial, refresher or continued training, a supervisory pilot shall be assigned who shall retain the ultimate responsibility for the safe pilotage of the vessel throughout the time that the supervisory pilot is on board.

(y) The license of any pilot or inland pilot who fails a chemical test for dangerous drugs as defined in Section 202 of this Chapter, shall be immediately suspended, and if the charge of failing a chemical test for dangerous drugs is proven following a hearing pursuant to Harbors and Navigation Code Section 1182, the license shall be revoked.

NOTE: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Sections 1100, 1101(c), 1101(f), 1130(a), 1131, 1133, 1136(b), 1137, 1138, 1139, 1141(d), 1157, 1159.1, 1162, 1165, 1171.5, 1175, 1180, 1181, 1195 and 1196, Harbors and Navigation Code; and Title 46, Code of Federal Regulations, Section 4.03-2 and Part 16.

HISTORY

1. New section filed 5-9-88; operative 6-8-88 (Register 88, No. 20).
2. Renumbering of former section 219 to section 221 and renumbering and amendment of former section 217 to section 219 filed 8-12-93; operative 9-13-93 (Register 93, No. 33).
3. New subsection (w) and amendment of NOTE filed 6-16-94; operative 7-18-94 (Register 94, No. 24).
4. Amendment of subsections (t)-(v), new subsection (x) and amendment of NOTE filed 2-23-95; operative 3-27-95 (Register 95, No. 8).
5. New subsection (y) and amendment of NOTE filed 4-20-98; operative 5-20-98 (Register 98, No. 17).
6. Amendment of section and NOTE filed 6-3-2003; operative 7-3-2003 (Register 2003, No. 23).

§ 220. Duties of Pilot Trainees.

(a) A pilot trainee shall obey all regulations of the Board.

(b) A pilot trainee absent from his or her duties without permission is liable to suspension and forfeiture of stipend, if any, for the period of absence. A pilot trainee may not be absent from duty for more than 30 consecutive days without obtaining a leave of absence from the Board, unless such absence is caused by the pilot trainee's sickness or personal injury, in which case a leave of absence from the Board shall be obtained if the absence extends for more than 60 days.

(c) A pilot trainee shall not perform any duties of a pilot trainee while intoxicated or under the influence of any substance or combination of substances which so affects the pilot trainee's nervous system, brain or muscles as to impair, to an appreciable degree, the pilot trainee's ability to properly perform his or her duties.

(d) A pilot trainee shall not, through ignorance, willfulness or neglect, cause a vessel to run on shore or to become exposed to liability for damage to persons or property, or otherwise cause injury or damage to persons, property or the marine environment during the performance of his or her duties as a pilot trainee.

(e) A pilot trainee shall always obey the applicable Rules of the Road for the navigation of vessels and shall, under all circumstances, perform his or her duties in a manner which does not endanger persons, property or the marine environment or cause damage, injury or loss of life.

(f) A pilot trainee shall obey all lawful instructions and directives given to him or her, or to pilot trainees in general, by the Pilot Evaluation Committee or by any member of such Committee, the Port Agent or his or her designee.

(g) A pilot trainee, when notified to report in person to the Board, shall report as directed in the notification.

(h) A pilot trainee shall only train on vessels assigned to him or her by the Port Agent, his or her designee or a member of the Pilot Evaluation Committee.

(i) A pilot trainee shall keep his or her current address and residence telephone number on file with the Board by submitting the required information to the Administrative Assistant/Secretary in a timely fashion.

(j) While engaged in any pilot trainee activity, a pilot trainee shall obey all applicable laws and conduct himself or herself so as not to cause injury or damage to persons, property or the marine environment.

(k) Any pilot trainee who fails a chemical test for dangerous drugs, as defined in Section 202, shall be immediately suspended from further training and, if, after a hearing held pursuant to subsection (f) of Section 214, the Board determines that the trainee failed a chemical test for dangerous drugs, the trainee shall be dismissed from the training program.

[The next page is 15.]

NOTE: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Sections 1100, 1101(c), 1101(e), 1101(f) and 1171.5, Harbors and Navigation Code.

HISTORY

1. New section filed 5-9-88; operative 6-8-88 (Register 88, No. 20).
2. Renumbering of former section 220 to section 222 and renumbering and amendment of former section 218 to section 220 filed 8-12-93; operative 9-13-93 (Register 93, No. 33).
3. Amendment of subsections (d), (e), (j) and NOTE filed 2-23-95; operative 3-27-95 (Register 95, No. 8).
4. New subsection (k) and amendment of NOTE filed 4-20-98; operative 5-20-98 (Register 98, No. 17).
5. Amendment of section and NOTE filed 6-3-2003; operative 7-3-2003 (Register 2003, No. 23).

§ 221. Charges and Proceedings Concerning Licenses.

(a) When an accusation recommending the suspension or revocation of a pilot's or inland pilot's license has been filed with the Board pursuant to subsection (d) of Section 210, the accusation shall be served on the pilot or inland pilot in accordance with Section 11505 of the Government Code. A hearing shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code to determine if cause exists to take action against the license of the pilot or inland pilot who is the subject of the accusation. At such a hearing, the Board shall have all the powers granted therein and by the Code.

(b) If the Board finds reasonable cause to believe that the public interest requires that the license of a pilot or inland pilot be summarily suspended pending a hearing on charges of violating the Code or the regulations issued by the Board, or of other misconduct, the Board may, without a hearing, temporarily suspend the license of the pilot or inland pilot involved for a period not exceeding 40 days pending a hearing and decision on the charges. Thereafter, unless an accusation on the charges is served on the pilot or inland pilot as provided in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, within six days after the suspension becomes effective, the suspension shall terminate at the end of the sixth day. The Board may revoke the temporary suspension at any time it determines that the public interest no longer requires it.

(c) If a hearing on an accusation against a pilot or inland pilot results in a finding of misconduct, the Board may order the pilot's or inland pilot's license revoked, suspended outright for a specified period of time, or suspended on probationary restriction for a specified period of time on such terms and conditions of probation as in its judgment are supported by its findings. The Board may also issue such other lawful orders it considers to be appropriate on the basis of its findings.

(d) The license of a pilot or inland pilot who is the subject of a pending accusation, except in the case of a hearing or an accusation brought pursuant to subsection (e)(6) of Section 217, shall be subject to renewal or non-renewal on the same terms and conditions as if the accusation were not pending. The renewal of the license of a pilot or inland pilot against whom an accusation is pending shall not be used as evidence in any manner in connection with or at the hearing on the pending accusation.

(e) An accusation may be terminated by written stipulation at any time prior to the conclusion of the hearing on the accusation. Any such stipulation shall comply with the provisions of subsection (d) of Section 210. If a pilot or inland pilot submits a proposed stipulation to the Board for its consideration and the Board subsequently declines to accept the proposed stipulation, the Board shall not thereafter be disqualified from hearing evidence on the accusation and taking action thereon as authorized in subsection (c) of this section. However, the Board shall not consider the proposed stipulation as evidence for any purpose, and its decisions shall be based solely on the evidence presented to it at the hearing.

(f) The Board may at any time between the service of an accusation and the hearing thereon act to summarily suspend from duty the pilot or inland pilot who is the subject of the accusation. Under such circumstances, the suspension shall remain in effect until further order of the Board, but in no case shall the suspension exceed 40 days.

NOTE: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Sections 1106, 1150(d), 1180, 1180.3, 1180.6, 1181, 1182 and 1183, Harbors and Navigation Code.

HISTORY

1. Renumbering and amendment of former section 219 to section 221 filed 8-12-93; operative 9-13-93 (Register 93, No. 33).
2. Amendment of subsection (a) and NOTE filed 1-26-96; operative 2-25-96 (Register 96, No. 4).
3. Amendment filed 6-3-2003; operative 7-3-2003 (Register 2003, No. 23).

§ 222. Conflicts of Interest.

(a) It is recognized that a pilot may acquire or have access to information, before it is available to others, about the movement of vessels. A pilot has a duty not to utilize such information for financial gain or to provide such information to others who may benefit or otherwise profit from obtaining such information before it is generally available to the public.

(b) A pilot shall not provide information or knowledge regarding vessel schedules obtained by the pilot, by virtue of his or her status as a pilot or Port Agent, to any entity except as is necessary to the discharge of his or her duties as a pilot or Port Agent.

(c) To assure that commerce is not disrupted and that fair competition is maintained among tugboat operators and others who provide vessel assistance services on Monterey Bay or on the Bays of San Francisco, San Pablo or Suisun, a pilot shall not have any interest in, or derive any income from, any tugboat in operation on Monterey Bay or on the Bays of San Francisco, San Pablo or Suisun.

(d) Nothing contained in subsection (c) of this section shall prohibit ownership, directly or indirectly, of stock in any corporation registered on a national securities exchange, pursuant to Section 78f of Title 15 of the United States Code, even though the corporation may own tugboats in operation on the waters subject to the Board's jurisdiction.

(e) Nothing contained in subsection (c) of this section shall prohibit any pilot from owning, directly or indirectly, or controlling any barge or vessel similar to a barge. A barge or a vessel similar to a barge for purposes of this subsection is a vessel constructed and operated for the purpose of transporting cargo and which is not used to assist with the movement of vessels.

NOTE: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Section 1170.3, Harbors and Navigation Code.

HISTORY

1. Repealer and new section filed 5-9-88; operative 6-8-88 (Register 88, No. 20). For history of former section, see Registers 83, No. 1 and 67, No. 21.
2. Renumbering and amendment of former section 220 to section 222 filed 8-12-93; operative 9-13-93 (Register 93, No. 33).
3. Amendment of section and NOTE filed 6-3-2003; operative 7-3-2003 (Register 2003, No. 23).

§ 223. Duty on Outward Bound Vessels.

HISTORY

1. Repealer filed 5-9-88; operative 6-8-88 (Register 88, No. 20).

§ 224. Restriction of Service.

NOTE: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Sections 1125, 1180 and 1181(h), Harbors and Navigation Code.

HISTORY

1. Amendment filed 12-27-82; effective thirtieth day thereafter (Register 83, No. 1).
2. Repealer filed 5-9-88; operative 6-8-88 (Register 88, No. 20).

§ 225. Leaving Station.

HISTORY

1. Repealer filed 8-6-76; effective thirtieth day thereafter (Register 76, No. 32).

§ 226. Carriage of Letters.

NOTE: Authority cited: Section 1154, Harbors and Navigation Code.

HISTORY

1. Repealer filed 1-6-82; effective thirtieth day thereafter (Register 82, No. 2).

§ 227. Reporting of Accidents.

HISTORY

1. Amendment filed 10-3-67; effective thirtieth day thereafter (Register 67, No. 40).
2. Amendment filed 8-6-76; effective thirtieth day thereafter (Register 76, No. 32).
3. Repealer filed 5-9-88; operative 6-8-88 (Register 88, No. 20).

§ 228. Pilots to Answer Summons.

HISTORY

1. Repealer filed 5-9-88; operative 6-8-88 (Register 88, No. 20).

§ 229. Sworn Testimony.

HISTORY

1. Repealer filed 5–9–88; operative 6–8–88 (Register 88, No. 20).

§ 230. Duties of Port Agent.

HISTORY

1. Repealer filed 5–9–88; operative 6–8–88 (Register 88, No. 20).

§ 231. Absence of Pilots.

HISTORY

1. Repealer filed 5–9–88; operative 6–8–88 (Register 88, No. 20).

§ 232. Boats in Service.

HISTORY

1. Repealer filed 5–9–88; operative 6–8–88 (Register 88, No. 20).

§ 233. Approval of Boats.

HISTORY

1. Repealer filed 5–9–88; operative 6–8–88 (Register 88, No. 20).

§ 234. Personal Reports to the Board.

HISTORY

1. Repealer filed 5–9–88; operative 6–8–88 (Register 88, No. 20).

§ 235. Violation of By–Laws.

NOTE: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Section 1181(h), Harbors and Navigation Code.

HISTORY

1. Repealer filed 12–27–82; effective thirtieth day thereafter (Register 83, No. 1).

Article 7. Pilotage Rates

§ 236. Rate Hearing Procedures.

(a) Pilotage rates are set by statute codified at Chapter 5 of Division 5 of the Harbors and Navigation Code, beginning with Section 1190. The Board's role in the setting of pilotage rates is to hold public hearings to investigate such rates and make recommendations to the Legislature. Any party directly affected by pilotage rates may petition the Board for such a rate hearing, as set forth in this section; however, nothing contained in this section shall preclude the Board from conducting a duly noticed rate hearing on its own motion.

(b) Within ten (10) days after receipt by the Board of a petition for a rate hearing from a party directly affected by pilotage rates, the Board shall notice a public hearing to be held not less than thirty (30) nor more than sixty (60) days from the date of the notice. Such notice shall be given to all parties directly affected by pilotage rates and to all other interested parties who have requested such notification. The purpose of the hearing is to obtain information and data relating to the issues raised in the petition or notice.

(c) The party proposing a rate adjustment shall have the burden of proving by a preponderance of the evidence that a change in the rates is justified. Ten (10) copies of all written evidence submitted in support of the petition shall be deposited with the Board at least thirty (30) days prior to the date set for the hearing. Such written evidence shall be available for public inspection during normal Board hours.

(d) Any party wishing to respond to a petition for a rate adjustment shall submit ten (10) copies of all written evidence it relies on to support its response, and shall deposit them with the Board at least ten (10) days prior to the date set for the hearing. Such evidence shall be available for public inspection during normal Board hours.

(e) Upon the filing of a petition for a rate hearing, copies of the most recent annual audited financial statements of the San Francisco Bar Pilots and of the San Francisco Bar Pilots Benevolent and Protective Association shall be deposited with the Board and made available for public inspection during normal Board hours. The Board may also require an independent audit of pilot operations by a public accountant selected by the Board. The results of any such independent audit shall be made available for public inspection during normal Board hours and shall become a part of the record.

(f) Factors to be considered by the Board in preparing its recommendation to the Legislature on pilotage rates include, but are not limited to, the following:

(1) Costs of Providing Pilot Services. Parties directly affected by pilotage rates are encouraged to use the Board's process for periodic review of pilotage expenses to reach agreement on whether specific expense categories should be considered a "cost of providing pilot services" within the meaning of this section. Absent a showing that there was no reasonable opportunity to do so, the failure to make use of that process may result in the Board's refusal to approve an expense category not previously approved as a cost of providing pilot services or in the Board's refusal to reverse a previous decision to approve such an expense category.

(2) Net Return to Pilots Sufficient to Attract and Hold Qualified Pilots. A party contending that the current rates result in a net return which is insufficient to attract or hold qualified pilots has the burden of persuading the Board of that point of view. In determining the issue, the Board may consider the level of qualifications and number of applicants meeting minimum qualifications for its pilot trainee training program, the number and circumstances of pilots resigning before their eligibility for statutory retirement benefits, and any other evidence relevant to the issue.

(3) Cost of Living Index. In assessing the adequacy of the net return to pilots, the Board will consider, as one factor, the change in the annual average, seasonally unadjusted consumer price indices between the last rate hearing and the most recent 12–month period for which such data is available from the U. S. Department of Commerce, Bureau of Labor Statistics, for the "Western Region" and for "All Urban Consumers, San Francisco–Oakland–San Jose."

(4) Rates Charged for Comparable Services in Other Ports. "Comparable services" means pilotage from sea to dock in ports with generally similar geographic and hydrographic parameters, vessel traffic in density and in size and type of vessels, number of vessel movements, length of transit, number of pilots, pilot work load and relative difficulty of pilotage and hazards encountered. While the Board recognizes that no port will be precisely the same in all these categories as the waters under the Board's jurisdiction, it encourages the parties to agree on a limited number of ports which are sufficiently comparable for this purpose and for which accurate pilotage rate, pilot income and/or pilot expense data is reasonably available in the public record or is otherwise verifiable.

Absent persuasive evidence to the contrary, the Board recognizes the following ports as comparable for purposes of this section: Columbia Bar/River, Houston, Tampa Bay, Sandy Hook (NY/NJ), New Orleans/Baton Rouge, St. Johns Bar (Jacksonville), Maryland (Chesapeake Bay) and Puget Sound (Seattle). Pilotage rate and pilot income and expense data for other ports shall be supported by evidence that the pilotage services for those ports are comparable as defined in this subsection.

(5) Income Paid for Comparable Services. Parties submitting evidence of pilot income and expenses in other ports shall limit such evidence to ports providing comparable services, as defined in subsection (f)(4) above and for which accurate pilotage rate, pilot income and/or pilot expense data is reasonably available in the public record or is otherwise verifiable. Evidence of pilot income and expenses in other ports shall be accompanied by the cost of living differential between those ports and the San Francisco Bay Area for the period for which the pilot income and expense data applies if such differential information is available in the public record.

(6) Methods of Determining Rates in Other Ports. Parties wishing to offer evidence of how pilotage rates are determined in other ports should do so for those ports for which pilotage rate or pilot income and expense data is also provided.

(7) Economic Factors Affecting Local Shipping. The Board will consider such competent evidence as the parties may submit regarding economic factors affecting the local shipping industry, including prospective increases or decreases in income and labor costs. A party wishing to

affect a rate change on the basis of such economic factors has the burden of persuading the Board that the evidence supports that party's argument.

(8) Volume of Shipping Traffic. The Board may rely on data of vessels piloted as submitted monthly by the pilots. That data is available as a public record of the Board.

(9) Number of Pilots Available. In preparing its recommendation on pilotage rates, the Board will consider the number of pilots actually licensed at the time of the rate hearing. Any issues regarding the adequacy of that number should be addressed in a duly noticed hearing held pursuant to Harbors and Navigation Code Sections 1170.1 and 1170.2.

(10) Risk to Pilots. The Board recognizes the inherent risk to the personal safety of the pilots in providing pilotage services, including those risks posed by the physical characteristics of the pilotage grounds within the Board's jurisdiction. A party seeking to affect a rate change on the grounds that there have been material changes in those risks has the burden of proving such changes.

(11) Changes in Navigational and Safety Equipment/Pilot Support Activities. The Board recognizes that, in recent years, there have been substantial changes in training requirements placed on pilots, in regulations which pilots must implement, and in the complexity and size of vessels which increases the professional demands on pilots. The Board also recognizes that pilots have provided services beyond the navigation of vessels. Such services are referred to as "pilot support activities." Changes in those pilot support activities that are necessary to providing pilot service may be considered in determining the appropriate pilotage rate. To the extent such changes have increased the costs to the pilots of providing pilot services, these costs should be addressed under subsection (f)(1) above. To the extent such changes have resulted in increased time demands, such demands should be addressed at a duly noticed hearing to determine the number of pilots under Harbors and Navigation Code Sections 1170.1 and 1170.2.

(12) The weight to be given to each of the factors enumerated in this subsection may vary depending on prevailing circumstances and shall be left to the sound discretion of the Board.

(g) At least seven (7) days prior to the hearing, or at such time as the President may direct, the representatives and/or counsel for the parties supporting and responding to the petition for a rate change shall meet with the President or his/her designee at the time and place directed by the President, to determine if the issues raised by the petition can be narrowed or resolved by stipulation, and to address the order of and anticipated length of the presentation of evidence; the number and identity of witnesses and the subject matter and scope of their testimony; identification and possible resolution of any evidentiary issues; and any other matter which promotes efficiency in conducting the rate hearing.

(h) The President, or his/her designee, may issue a pre–hearing order setting forth any stipulations or limitations on the scope of the hearing or the issues to be presented as agreed to by all parties attending the pre–hearing conference. Participation by the President or any other Board member in the pre–hearing conference shall not disqualify him or her from participation in the rate hearing.

(i) The rate hearing shall be conducted at the time and place set forth in the Notice or in any amendment thereto and shall be conducted in accordance with the Bagley–Keene Open Meeting Act (Government Code Sections 11120, et seq.). A full record shall be kept of all evidence offered at the hearing, including a verbatim transcript of all testimony, which shall be given under oath.

(j) Following the presentation of evidence in support of and in response to the petition for a rate hearing, any additional evidence requested by the Board, any evidence submitted in rebuttal, and the closing arguments of the parties, if any, the Board shall proceed with deliberation, including a review and evaluation of all the evidence received at the hearing and a determination of what pilotage rate change, if any, is warranted by the evidence. The Board's deliberation shall be conducted at a duly noticed meeting open to the public and shall be transcribed electronically or by a certified shorthand reporter, as the Board may direct.

(k) Upon completion of its deliberation and within 120 days from the filing of the petition, the Board shall submit its findings and recommendations, supported by a transcript of the proceedings, to the Secretary of the Senate and the Chief Clerk of the Assembly.

NOTE: Authority cited: Section 1154, Harbors and Navigation Code: Reference: Sections 1190, 1191, 1200, 1201, 1201.5, 1202 and 1203, Harbors and Navigation Code.

HISTORY

1. New article 7 (section 236) and section filed 12–11–2001; operative 1–10–2002 (Register 2001, No. 50).

§ 236.1. Pilot Boat Surcharge.

(a) A separate surcharge on pilotage fees called a Pilot Boat Surcharge is authorized by Section 1190(a)(1)(B) of the Harbors and Navigation Code to recover those of the pilots' costs of obtaining new pilot boats and of funding design and engineering modifications for extending the service life of existing pilot boats that are authorized by law. The surcharge is in the form of additional mills per high gross registered ton. This section sets forth the procedures for obtaining the Board's authorization to recover such costs and to set and periodically adjust the Pilot Boat Surcharge.

(b) For purposes of this section, the term "new pilot boat" shall include an existing vessel acquired from another owner.

(c) Requests made pursuant to this section shall be submitted to the Board in writing and shall be supported by the data and documentation required by this section. The requesting party must establish to the satisfaction of the Board that the expenditures for a new pilot boat or for life extension modifications to an existing pilot boat are — or, if those costs have already been incurred, were — reasonable and necessary. The process requires a necessity determination, a preliminary authorization and a final authorization, which are described in subsections (d), (e) and (f) respectively.

(d) Necessity Determination

(1) A request for a Board determination that expenditures for a new pilot boat or for life extension modifications to an existing pilot boat are or were necessary may be made prior to or at the same time as a request for preliminary authorization to recover such costs.

(2) The Board may consider a request for a necessity determination at a duly noticed regular or special Board meeting held after the request and all documentation in support of the request have been deposited with the Board and made available for public inspection. Notice shall be given to all parties directly affected by pilotage rates or to a trade organization representing such parties and to all other parties who have requested such notification.

(3) Documentation in support of a necessity determination shall be sufficient to allow the Board to assess the remaining service life of the existing pilot boats, both with the proposed life extension modifications, if any, and without such modifications. The Board or its advisory committee may request additional documentation or conduct its own investigation prior to making a necessity determination hereunder.

(4) A necessity determination made under this section shall be valid for one year unless directed otherwise by the Board.

(4) Preliminary Authorization

(1) A request for the Board's preliminary authorization to recover the pilots' costs of obtaining new pilot boats or funding design and engineering modifications for extending the service life of existing pilot boats shall precede a request for a final authorization and shall include a request for a necessity determination unless a necessity determination is pending or has been issued by the Board and remains valid.

(2) The Board may consider a request for preliminary authorization at a duly noticed regular or special meeting held after the request and all documentation in support of the request have been deposited with the Board and made available for public inspection. Notice shall be given to all parties directly affected by pilotage rates or to a trade organization representing such parties and to all other parties who have requested such notification.

(3) Documentation in support of a request for preliminary authorization shall be sufficient for the Board to assess the reasonableness of the request in light of its necessity determination and shall include basic design and performance specifications, cost estimates, proposed timeline of major milestones for design and construction of a new pilot boat or for acquisition and modification of an existing vessel, or installation of life extension modifications on an existing pilot boat, and plans for long term financing. The Board or its advisory committee may request additional documentation from the requesting party prior to issuing a preliminary authorization hereunder.

(4) The purpose of a preliminary authorization is to provide an opportunity for meaningful and early communication among affected parties and the Board on issues relevant to the costs of obtaining new pilot boats or of funding design and engineering modifications of existing pilot boats. Preliminary authorizations may be issued in stages as circumstances dictate.

(5) The Board may issue a preliminary authorization on such terms as it may deem appropriate to provide guidance to the parties on such matters as have been addressed and to set the conditions and timing for a final authorization determination. The authority to recover costs under this section or to set a Pilot Boat Surcharge rate shall only be issued after a final authorization.

(f) Final Authorization

(1) A request for final authorization to recover the pilots' costs of obtaining new pilot boats or of funding design and engineering modifications intended to extend the service life of existing pilot boats may be submitted to the Board at such time as directed in the Board's preliminary authorization issued pursuant to subsection (e)(5).

(2) The Board may consider a request for final authorization at a duly noticed regular or special Board meeting held after the request and all documentation in support of the request have been deposited with the Board and made available for public inspection. Notice shall be given to all parties directly affected by pilotage rates or to a trade organization representing such parties and to all other parties who have requested such notification.

(3) Documentation in support of a request for final authorization shall be sufficient for the Board to assess the reasonableness of the request in light of its necessity determination and shall include such information and data as determined in the preliminary authorization.

(4) In the case of service life extension modifications, the documentation shall also include sufficient data to determine and quantify the associated operational savings, including reduced repair and maintenance expenses that are reasonably expected to result from the service life extension modifications, and shall set forth the proposed basis for periodic review to determine actual savings over the life of the pilot boat.

(5) The Board or its advisory committee may request additional documentation from the requesting party prior to issuing a final authorization hereunder.

(6) The Board may issue a final authorization setting forth the costs to be recovered by the pilots under this section, the reasons therefor, the initial surcharge rate and the date it is to go into effect.

(7) The Board may, as a condition of issuing a final authorization relative to proposed service life extension modifications to existing pilot boats, require periodic data from the requesting party to identify any associated operational savings, including reduced repair and maintenance expenses, resulting from such modifications and adjust the Pilot Boat Surcharge rate from time to time to reflect such savings.

(8) The Port Agent shall provide timely information to the Board of the sale or other disposition of any pilot boats, of the net proceeds from such sale or disposition, and of the manner in which the net proceeds are to be used to reduce the debt associated with the new pilot boat or with the modifications to existing pilot boats hereunder. The Board may adjust the Pilot Boat Surcharge rate or reduce the costs to be recovered thereby to ensure compliance with the debt reduction provision of Harbors and Navigation Code Section 1190(a)(1)(B).

(g) A Pilot Vessel Advisory Committee may be appointed pursuant to Section 208 to review and assess the documentation relative to the requests pursuant to subsections (d)(3), (e)(3) and (f)(3) of this section, to conduct independent investigation of the issues and request additional documentation as it may deem appropriate, and to develop recommendations to the Board relevant to such requests or as otherwise directed by the Board. Actions on the requests shall only be taken at duly noticed meetings of the Board.

(h) The Finance Committee of the Board shall periodically, or at such times as the Board may direct, review the costs authorized for recovery and the current and projected income from the Pilot Boat Surcharge and shall prepare recommendations to the Board for periodic adjustments to the surcharge rate to ensure that the surcharge rate is sufficient to recover all costs — and only those costs — authorized by the Board for recovery. The rate should be sufficient to maintain a commercially reasonable reserve to allow for ordinary or anticipated fluctuations in surcharge income until all costs authorized have been recovered. Any rate adjustment shall be made by Board action at a duly noticed meeting and shall take effect at such dates as the Board may direct.

(i) For purposes of this section, "sale of existing pilot boats" shall include donation or other disposition of an existing pilot boat, and "net proceeds" from such sale includes the tax benefit realized from such donation less the costs associated with the donation.

NOTE: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Section 1190(a)(1)(B), Harbors and Navigation Code.

HISTORY

1. New section filed 6–10–2008; operative 7–10–2008 (Register 2008, No. 24).

Article 8. Number of Pilots

§ 237. Hearing Procedures to Determine Number of Licensed Pilots.

(a) The Board shall determine the number of pilot licenses to be issued and shall appoint and license the number of pilots sufficient to carry out the purposes of Division 5 of the Harbors and Navigation Code. In determining the number of pilot licenses issued by the Board to qualified applicants, the Board shall take into consideration all of the following:

(1) The findings and declarations in Harbors and Navigation Code Sections 1100 and 1101;

(2) The results of an audit made pursuant to subsection 236(e) of these regulations.

(3) The factors specified in Harbors and Navigation Code Section 1203(a) through (g); and

(4) The maritime industry's current economic trends, fluctuations in the number of vessel calls, the size of vessels, and whether the need for pilotage is increasing or decreasing.

The objective of the Board's determination of the number of pilot licenses to be issued to qualified applicants is to ensure the availability of an adequate number of qualified, rested pilots to provide timely pilotage services. Before changing the number of pilot licenses issued, the Board shall conduct hearings in accordance with this article.

(b) The Board will conduct hearings as frequently as is necessary to provide meaningful and timely guidance in determining the appropriate number of pilot licenses to be issued and the number of pilot trainees to be selected pursuant to Sections 216 and 213, respectively, of these regulations.

(c) The Board will consider whether a hearing under this section is necessary by reviewing the current number of pilot licenses issued, the results of the most recent hearing, and the data collected pursuant to subsection (d) of this section at the following times:

(1) Prior to the selection of additional pilot trainees;

(2) Prior to issuing additional original pilot licenses;

(3) Upon the request of any party directly affected by pilotage;

(4) Annually;

(5) At such additional times as the Board may direct.

(d) The San Francisco Bar Pilots shall provide the following data to the Board annually and at such other times as the Board may direct. The data shall cover the previous 12-month period, or such other period as the Board may direct, and shall be available for public inspection during normal Board hours:

(1) Total number of vessel moves;

(2) Total number of pilots assigned to move vessels;

(3) Number of pilots assigned to move vessels each day;

(4) Number of bar crossings;

(5) Number of bay moves;

(6) Number of river moves;

(7) Average draft of piloted vessels;

(8) Average gross registered tonnage of piloted vessels;

(9) Number of pilots reported sick or injured and number of days each was unable to perform piloting duties;

(10) Number of times a pilot resumed duties with less than 12 hours off duty, the contributing circumstances, and the actual hours off duty between assignments;

(11) Number of pilot days during which pilots were engaged in Board-mandated training; and

(12) Number of pilot days during which pilots were engaged in administrative duties authorized by the Port Agent, with a description of those duties.

(e) Upon determining that a hearing will be conducted, the Board will notice a public hearing to be held not less than thirty (30) days from the date of the notice, or at such later time as the Board may direct. The notice shall comply with the applicable provisions of the Bagley-Keene Open Meeting Act, Government Code Sections 11120, et seq. The purpose of the hearing is to obtain information and data relevant to determining the number of licensed pilots in accordance with this section.

(f) At least fifteen (15) days before the hearing, the Executive Director shall assemble and make available for public inspection during normal Board hours the following data:

(1) All data collected pursuant to subsection (d) of this section since the last hearing, including a summary of such data in the form used as input for the 1986 manpower study computer model pursuant to Harbors and Navigation Code Section 1190(d);

(2) Data considered by the Board at the most recent rate hearing relative to the factors listed in Harbors and Navigation Code Section 1203 and such changes or updated data as is readily available;

(3) The results of any audits made pursuant to Harbors and Navigation Code Section 1203 since the last hearing to determine the number of licensed pilots;

(4) Data establishing the maritime industry's current economic trends;

(5) A summary showing changes since the last hearing to determine the number of licensed pilots in the following:

(i) the number of vessel calls;

(ii) the average draft of piloted vessels;

(iii) the average gross registered tonnage of piloted vessels.

(6) Data establishing whether the need for pilotage is increasing or decreasing;

(7) Ages of pilots currently licensed and anticipated retirements; and

(8) Such other data as the Board may direct.

(g) The Board president shall appoint a committee chaired by a commissioner and made up of one or more representatives each from industry, pilots and the public, to review and analyze the information and data assembled pursuant to subsection (f) of this section, to review any additional data, input and comments from the San Francisco Bar Pilots, members and representatives of the maritime industry and members of the public, and to prepare recommendations to the Board regarding the factors which the Board should consider in determining the number of pilots to be licensed. Minutes of the Committee's meetings shall be made available for public inspection not less than ten (10) days before the hearing conducted pursuant to subsection (h) of this section.

(h) A hearing shall be conducted at the time and place set forth in the notice provided pursuant to subsection (e) of this section and shall be conducted in accordance with the Bagley-Keene Open Meeting Act (Government Code Sections 11120, et seq.). A full record shall be kept of all evidence offered at the hearing, including a verbatim transcript of all testimony.

(i) Following the presentation by the committee appointed pursuant to subsection (g) of this section, any additional presentations on behalf of the San Francisco Bar Pilots, the maritime industry and the general public, the Board shall close the record and proceed with deliberations, including a review and evaluation of all the evidence received at the hearing and a determination of the number of pilot licenses to be issued. The Board's deliberation shall be conducted at a duly noticed meeting open to the public and may be transcribed. At the conclusion of its deliberations, the Board shall issue written conclusions with regard to the number of pilot licenses to be issued, and the manner in which any change to reach that number will be implemented.

NOTE: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Sections 1170, 1170.1, 1170.2 and 1190(d), Harbors and Navigation Code.

HISTORY

1. New article 8 (section 237) and section filed 4-4-2002; operative 5-4-2002 (Register 2002, No. 14).

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